ANNUAL REPORT
OF THE
SAN FRANCISCO PUBLIC DEFENDER

1981-82

SEPTEMBER 15, 1982

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PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

ANNUAL REPORT

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

FISCAL YEAR 1981-1982

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D E D I C A T I O N

To Bruce Hotchkiss for his
courageous and untiring devotion to the
rights of the clients of the
Office of the Public
Defender

INTRODUCTION

The Public Defender is the lawyer for people who are charged with crimes who do not have money to hire their own lawyers. In San Francisco the Public Defender is the lawyer for about 29,000 persons every year. To carry out that responsibility, the Public Defender has a staff of 69 lawyers and another 35 support personnel.

The idea of a Public Defender stems from a requirement in the Sixth Amendment that all persons accused of crimes shall have the effective assistance of counsel. In establishing an organized public defender's office, San Francisco has provided this crucial constitutional protections.

The Annual Report for Fiscal Year 1981-82 details, largely in statistical form, the work of the Office of the Public Defender of the City and County of San Francisco. It will present a record of expenditure, programs, program costs, and performance objectives for the office and for its various functions.

This Annual Report will also comment on the needs, the accomplishment, and the shortcomings of the Public Defender's Office. This is not a propaganda document. It is truly a self-examination of a great office.

I. JURISDICTION

Section 33 of the Charter:

> "[The Public Defender] shall immediately, upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give advice to a person charged with the commission of a crime."

The Public Defender is a creature of the Charter of the City and County of San Francisco. The Charter provides that the Public Defender will represent persons who have been charged with criminal offenses and who are without funds to pay for a privately-retained lawyer.[1/]

In addition to this specific grant of power by the Charter, the California Government Code also authorizes counties, such as San Francisco, to establish public defender offices.[2/] The Government Code sets forth the types of cases which can be handled by a County Public Defender. These include:[3/]

(1) Criminal cases upon request or by appointment of the court;

(2) Contempt cases;

(3) Appeals;

(4) Actions for the collection of wages or other demands under one hundred dollars;

(5) Defense of individuals in civil litigation where a person is being harassed or persecuted;

1/ Charter Section 33

2/ Government Code Section 27706

3/ Ibid.

(7) Juvenile cases.

(6) Cases involving mental health guardianships and conservatorships;[4]

The Welfare and Institutions Code also provides for the appointment of attorneys for indigent parents whose custody rights are subject to proceedings for suspension or termination.[5]

The law, thus, provides for public defender representation in a wider spectrum of activities. The great bulk of that effort is in the criminal courts. But this office is also extremely active in representing persons in mental health and juvenile cases.

II. OFFICE STRUCTURE, STAFF, BUDGET, AND WORKLOAD

1. Office Structure

The executive officer of the Public Defender's Office is the Public Defender. The Public Defender is elected every four years. The Public Defender appoints all Deputy Public Defenders and a Confidential Secretary.[6] These employees serve at his pleasure. The balance of the staff, which includes investigators, secretarial, and other support personnel, are selected through Civil Service rules.

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[4] Probate Code Section 1471 also provides for public defender appointment in probate guardianships under specified conditions.

[5] Sections 634 and 317 of the Welfare and Institutions Code.

[6] Charter Section 3.47

The Chief Attorney is the second executive officer of the department. The Chief Attorney is the person to whom all other supervisors directly report. The Chief Attorney is Acting Public Defender should the latter leave the state.

There are six administrative units in the Public Defender's Office. Five of these six relate directly to legal representation and are under the direction of supervising attorneys. These include:

(1) Misdemeanor Unit: 15 attorneys in 6 Municipal Courts.

(2) Felony Unit: 35 attorneys in both the Municipal Court (Felony Division) and in the Superior Court and a sentencing alternative specialist.

(3) Mental Health Unit: 5 attorneys, 1 investigator, and a secretary.

(4) Juvenile Unit: 7 attorneys, 1 investigator, 2 social workers, 3 clerical-secretarial personnel.

(5) Research Unit: 2 attorneys and 1 paralegal.

The other two supervisory units are the Administrative and Investigation Units. These are supervised by the Executive Assistant and a Head Trial Attorney, respectively.

2. Staff

The office has a total of 111 employees. This includes:

	Permanent	Temporary	Total
69 lawyers	49	20	69
11 investigators	4	7	11
7 steno-transcribers	4	3	7
4 clerk-typists		4	4
2 paralegals		2	2
12 legal process clerks		12	12
1 accountant		1	1
1 executive assistant	1		1
2 telephone operators		2	2
2 social workers		2	2
Total			111

The majority of public defender positions are permanent civil service. However, a total of 51 others are designated as temporary positions. Most of these temporary positions include lawyers, investigators, and various other support personnel.

3. Budget

The Public Defender's Budget for Fiscal Year 1982-83 is almost totally derived from local funding.

In previous years approximately half the staff was paid from federal sources under the Comprehensive Emergency Training Act (C.E.T.A.). In Fiscal Years 80-81 and 81-82 those programs were curtailed and finally eliminated, leaving the City and County to bear full departmental costs. There are small amounts in state subvertion: $33,015 under Section 987.6 and $71,000 for juvenile social workers under A.B. 90.

The total budget for the Office of the Public Defender is $4,347,655. Table A represents an expenditure breakdown by particular costs.

TABLE A

Cost Breakdown

Salaries	
Permanent	$2,304,681
Temporary	929,722
Total	$3,234,403
Fringes	816,105
Salaries and Fringes Subtotal	$4,050,508
Contractual Services	15,200
Other Services	36,405
Materials and Supplies	15,465
Rental of Property	7,500
Equipments	5,650
Repairs	8,307
Reproduction	535
Travel	150
Adult Probation	4,930
Expert Witnesses	80,000
Controller - Data Processing	107,363
Central Shop	15,000
Training	642
Total Costs	$4,347,655

TABLE B

Program Costs--Salary and Fringe

Costs by Activity[7]

Public Defender, Chief Attorney	$ 165,796.23
Clerical	373,689.68
Felony	1,862,878.37
Misdemeanor	613,157.58
Juvenile	484,577.10
Mental Health	281,454.83
Investigation (including Head Trial Atty.)	409,077.25
Research	103,790.00
Total	$4,294,421.04

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[7] Table B indicates allocation of salaries among the various activities of the office. This breakdown is probably as close as one could come to accurate "program costs." The determination of a true program cost would require an apportionment of $297,149 in non-personnel costs. That would be painstaking and given the small amount of money would present an insignificantly-different picture of the distribution of resources.

TABLE C

Comparative Budget

	78-79	80-81	81-82	82-83
Ad Valorem	2,201,463	1,207,211	2,938,032	4,415,765
C.E.T.A.	Not avail.	528,892	416,125	---
Title II (Community Development)	---	162,076	206,573	---
A.B. 90	66,000	73,739	52,751	71,000
Total -	Not avail.	1,971,918[8]	3,613,481	4,347,655

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[8] As Table C indicates, there was a dramatic change in 1981 away from federal assistance. Whereas, in the late 1970s, there was heavy reliance on C.E.T.A. funding (in fact, over 50% of the total staff was C.E.T.A. funded in 1978). The City and County has almost entirely picked up the increased costs.

4. Summary of Caseload

During Fiscal Year 1981-82 the Public Defender's Office represented a total of 21,377 clients. An itemized breakdown is set forth in Table D.[9/]

TABLE D

Caseload 1981-82

Superior Court Felonies	2,040
Motions to Revoke	207
Total	2,247
Municipal Court Felonies	5,100
Extradition	150
Total	5,250
Total Superior and Municipal Court Felonies	7,497
Less (number of felony cases held-to-answer or certified to Superior Court)	1,534
Total Felony Cases	5,963
Misdemeanors	9,826
Motions to Revoke	1,936
Total	11,762
Juvenile	2,598
Mental Health	1,054
Total Cases ...	21,377

9/A case is defined as a charge or series of charges arising out of a single accusatory pleading or consolidated accusatory pleading. Thus, if a defendant were charged in one complaint with five charges, that, nevertheless, would be considered one case. Likewise, if two defendants were charged in one complaint, that still would be one case. Finally, if two complaints were consolidated, there would still be only one case.

III. ADMINISTRATIVE UNIT

Program: (1) To provide fiscal management for the office

(2) To provide clerical and secretarial services for the office

(3) To provide data collection and statistical analyses

Program Cost: $373,689.68

The Administrative Unit is managed by Sharon Christensen, the Executive Assistant. The unit consists of four components:

(1) Word Processing Center (2 legal steno, 1 transcriber typist, and 1 clerk steno)

(2) Senior Legal Process Clerks (3 persons)

(3) Legal Process Clerks (7 persons)

(4) Accountant (1 accountant and 1 clerk)

(5) Reception Area Workers (2 telephone operators, 1 receptionist)

Word Processing

The Word Processing Center is an operation of maximum efficiency. Two legal stenographers, one transcriber typist, and one clerk stenographer type out the dictation and the written drafts of the entire legal staff. The work can be dictated by telephone with touch-tones at any time, day or night. The turn-around time is usually less that 24 hours, except for long documents. The quality of the work is first-rate. Two of the most outstanding employees in the Public Defender's Office, Sandy Gordon and Penny Poblete, work in the Center.

(1) To fully computerize data collection and statistical reporting

The Public Defender's Office has use of a shared computer system. Our computer terminals are connected to the central court computer. This enables us to retrieve information about cases, clients, attorneys, and charges. Additionally, requests for management information can be programmed and retrieved.

At the end of Fiscal Year 1981-82 and at the beginning of Fiscal Year 1982-83, an important step toward full computerization was taken. We stopped using with manual client records which were laboriously and belatedly maintained and, instead, began to rely on the shared information data system for current and historical information. Additional terminals were installed to make such information more available. The ability of the Public Defender to access information about attorney assignment increased the reliability of the on-line and off-line data.

In last year's Annual Report we detailed serious problems with the computer. As we stated there:

> "The system can answer an inquiry about where a case is, but it is not always accurate about who the attorney is, or what happened to the case. Internal checks do not exist to inquire accuracy and identify common sources of error." (At p. 20.)

Unfortunately, that problem remains today. As long as that is, in fact, true, management information--information about caseload, performance of individuals within the system--cannot

be completely relied on. Often, information has to be crossed-checked.

We believe that the Court Management System can do much more to provide an efficient and accurate system. Until that happens, there will be a severe under-utilization of this expensive system.

(2) To reduce conflicts by 15%

Often, the Public Defender's Office is not able to represent a client because of a conflict-of-interest. Usually, the conflict exists because there are co-defendants in a case, and we can only represent one person, or where the Public Defender is representing a witness of the person charged. In that situation the court appoints a private attorney to represent the person charged.

Conflict-of-interest cases cost the City a substantial sum of money. In Fiscal Year 1981-82 the Municipal and Superior Courts paid out $1.1 million.

We have taken concrete measures to reduce this cost as much as possible. We issued a set of guidelines for the attorneys that would assist them in deciding whether this office should continue to represent a particular client. Written forms must be submitted by the attorney where conflicts-of-interest have been declared. And in cases where a conflict exists only theoretically or as a matter of appearance, the Public Defender has continued to represent the client.

We have succeeded in stabilizing conflict costs. In Fiscal Year 1980-81 the cost of conflict cases was $1,113,310; in

Fiscal Year 1981-82 it was $1,117,712--an increase of $4,402. A breakdown is this:

	80-81		81-82	
	Cost	Cases	Cost	Cases
Muni Court	436,310	2,174	432,712	1,962
Superior Court	677,000	(Not avail.)	685,000	(Not avail.)

In part the overall increase reflects the increase in the fee schedule,commencing often the start of Fiscal Year 1980-81.

Interestingly, this County compares favorably with counties of similar caseloads:

	1980-81
Orange	$1,706,000
Sacramento	$1,230,000
Alameda	$1,467,000
San Bernardino	$1,220,000

(3) To reduce long-distance calls on centrex numbers

We have failed badly. The telephone costs are astronomical. In the month of October, 1982 the total long-distance call was $1,007 on the centrex lines. There are two reasons:

(a) There are no WATS lines for the Public Defender despite the fact that our work requires calls all over the stateand the nation.

(b) There is unlimited access to the centrex lines and no means to regulating the use of short stopping all outgoing calls.

The City and County has delayed where it should have acted in adopting a cost-effective and user-accountable phone system. The delay has cost this department tens of thousands of dollars. It has failed to act to establish intercept controls that would require outgoing callers to identify themselves and be accountable. This type of control could be easily and inexpensively established.

We warned the City continuously of this out-of-control expense. Unless it is addressed, the City will lose tens of thousands of dollars during the next months. It is all so unnecessary.

IV. FELONY UNIT

Program: To provide effective legal counsel in felony cases in the Municipal and Superior Courts

Program Cost: $1,862,878

The Felony Unit consists of 35 attorneys who handle over 6,000 felony cases in the Municipal and Superior Courts. The Felony Unit is supervised by two Head Trial Attorneys, Robert Berman and Joseph Spaeth.

The work of the attorneys in this unit begins in the Municipal Court where a felony defendant is arraigned on a charge. The court makes a determination whether the individual defendant can afford his/her own attorney; and if he/she cannot, the Public Defender is appointed. The Public Defender will then make appropriate bail/OR motions and set a date for a preliminary hearing. At the preliminary hearing, the prosecution will attempt to demonstrate that there is enough

evidence to hold the defendant to answer in the Superior Court. The defendant has the right to cross-examine the prosecution witnesses or to call his/her own witnesses (although this is not usually done). If the judge is satisfied that there is enough evidence ("reasonable and probable cause"), the defendant can be "bound over," ordered to stand trial in the Superior Court, and the matter is transferred to that court.

In the Superior Court the defendant is arraigned on the charges, and trial and pretrial dates are set.

When the defendant is in the Municipal Court, he/she is assigned a Deputy Public Defender. That attorney will handle the case through the preliminary hearing. After the preliminary hearing, a new attorney may be assigned. This is commonly called "horizontal representation." Or the same attorney may represent the client all the way through the process--both in the Municipal and Superior Courts. This we call "vertical representation."

This office operates almost entirely on a vertical basis. In only one preliminary hearing department, Department 20, are the clients of the Public Defender's Office represented by a different attorney at the Municipal and Superior Court level. Even in Department 20, serious felony cases, such as murder or several assault cases, are handled on a vertical basis. By January 1, 1983, we expect full vertical representation in all felony cases.

The advantages of vertical representation are significant. For one thing, it places the responsibility for representation on a single person, instead of fragmenting it among several. The attorney will be accountable for the outcome of the case, and every action throughout the life of the case must be undertaken--mindful of that fact.

The need for vertical representation is more apparent with the passage of Proposition 8. Proposition 8 restricts plea bargaining in the Superior Court in serious felony cases. The attorneys must make decisions of high consequence (i.e., whether a person without a preliminary in the Municipal Court).

Admittedly, vertical representation is a difficult system to administer and supervise. It requires that there be a sufficient number of attorneys with enough experience to handle felony case. It creates conflicts in scheduling, because the attorneys are often called more to more than one court in one day. And because the attorney retains a file throughout the case, it is less likely that a supervisor will review the file and preliminary hearing transcripts.

All of these considerations were weighed, and we believe that vertical representation can be implemented; and it will be in the best interests of our clients.

TABLE E

Public Defender Cases in Superior Court

1. Types of Cases

New or Unadjudicated Cases	2,040
Motions to Revoke	207

2. Dispositions

a. New or Unadjudicated Cases

Probation	867
State Prison	538
Dismissal	230
Misdemeanor	72
C.R.C.	12
C.Y.A.	13
1368	35
No disposition shown	227
Not guilty by reason of insanity	24
Mentally disordered sex offender	22
	2,040

b. Motion to Revoke

State Prison	41
Continued on probation	26
No disposition shown	140
	207

Trial Result

Found guilty	82
Acquitted	19
Found guilty of misdemeanor	4
Hung jury	3
Not guilty insanity	1
	109

Tables D and E both indicate an intense level of activity by deputy public defenders in the Superior Court. In the Appendix we have listed the types of charges the clients have faced. There it can be seen that there are extraordinary number of highly-serious charges. For example, in Fiscal year 1981-82 this office represented defendants in the Superior Court with the following charges: robberies - 234, felonious assaults - 252, homicides (including death-penalty cases) - 61, rapes - 28, and burglaries - 339, among others.

TABLE F

Fiscal Year Comparisons for Felony Cases

1. Cases - Superior Court

FY 78-79	2,203
FY 80-81	2,035
FY 81-82	2,314
FY 82-83	2,247

2. Number of Trials

		Conviction Rate
FY 78-79	118	75%
FY 79-80	82	75%
FY 81-82	114	65.5%
FY 82-83	109	75%

3. Preliminary Hearing Cases

FY 78-79	3,000
FY 79-80	3,620
FY 80-81	4,232
FY 81-82	5,100

Preliminary Hearing Courts

The Felony Unit handled a total of 5,100 preliminary hearing cases. Of that 5,100 cases, 1,162 were held-to-answered and sent to the Superior Court for arraignment, and 574 were sent to the Superior Court on a plea of guilty from the Municipal Court.

MBO OBJECTIVES

Activity: Felony Representation

1. To provide representation in 1,500 new cases

As Table F demonstrates, the number of preliminary cases will remain in the range of 4,000 to 5,200 cases. Most will settle short of a preliminary hearing, and some will not be held-to-answer in the Superior Court.

2. To submit all investigations within two days of defendant's arraignment or the appointment of the Public Defender

This is a difficult objective, and it is extremely hard to measure it. But it is a criminal objective now that Proposition 8 calls upon the attorney to decide whether or not to plea bargain at the time of the preliminary hearing. Unless the investigation is submitted early, the attorney is not in a position to make such a decision rationally.

3. To require four-hours' training per attorney per quarter

During Fiscal Year 81-82 and during the first quarter of Fiscal Year 82-83, the Office of the Public Defender meet its training goal. With the advent of Proposition 8 which touched upon even phase of criminal law practice, it was essential to provide training of attorneys in the office even before the election. That was done.

Attorneys have the responsibility on their own to continue legal education throughout their careers. This office has the responsibility to provide continuing education through in-house training, through scholarship programs to professional forums, and by time-off-the-job available to attorneys. The California Public Defenders' Association has state funding to present training sessions for deputy public defenders. Our attorneys participate in great numbers.

At the end of every quarter of the fiscal year, attorneys update their records about their participation in legal educational program. The desire of the attorney to partake of

continuing legal education is part of the overall evaluation of the attorney and is considered at the time a promotion is made.

4. To provide supervision by reading transcripts of all attorneys once a month

In supervising attorneys, the preliminary hearing offers one distinct advantage: in each case in which a defendant is held to answer, the testimony is reduced to a transcript. The transcript is the unarguable truth of the attorney's skill. If objections are overlooked, if cross-examination is weak, or if arguments are less than clear, the transcript will disclose it. Evaluating the progress of attorneys is essential if this office is going to ensure quality work. Therefore, supervision of this nature must be required.

5. To reduce the number of persons held-to-answer and certified by 10%

The percentage of cases reaching the Superior Court from the Municipal Court is small. Out of 5,150 cases set for preliminary hearing, only 1,535 or fewer than 30% reach the Superior Court. In Fiscal Year 1980-81, of the 4,232 preliminary cases, a total of 1,534, or 39%, reached the Superior Court. To a great extent, we were successful in reducing Superior Court commitments and, therefore, felony sentences.

Although we were successful in reducing the total number of holdings and certified pleas to the Superior Court, we must point out with concern the increase in guilty pleas in felony cases at the Municipal Court level. During Fiscal Year 81-82,

there were 372 such pleas. During Fiscal Year 80-81, there were only 105. This increase is also reflected on the number of "certified pleas", as they are called, rose in Fiscal Year 81-82 to a toal of 378. In Fiscal Year 80-81 the figure was 105. This trend is reflected in Judicial Council data for three years--two fiscal years and a calendar year.

Calendar Year 1980 .. 375

FY 80-81 462

FY 81-82 822

Proposition 8, the Victims Bill of Rights, restricts plea bargaining in the Superior Court in serious felony cases but allows it in the Municipal Court. The effect of this restriction has been to great additional pressure for a defendant to plead guilty at the Municipal Court level. This pressure is even further increased by the enhanced penalties for defendants having prior convictions for serious felonies.

Since June 8, when the voters approved Proposition 8, certified pleas to the Superior Court have risen to a point that they represent between 35-40% of the cases in the Superior Court.

This statistical jump in certified pleas is a matter of great concern.

Felony pleas in the Municipal Court are usually conducted at an early stage in the life of the case, usually before a solid lawyer-client relationship has developed and inevitably before an exhaustive investigation of the case has been conducted. Both the clients' sense of justice and the quality

of representation are bound to suffer. On the other hand, a client who refuses an offer for a settlement at the preliminary hearing may find himself/herself foreclosed by Proposition 8 from plea bargaining and exposed to a greater sentence either at trial or by pleading to the mercy of the court.

The choices are, therefore, often lamentable. But for the foreseeable future, the Municipal Court will remain an important and commonly-used forum for felony plea bargaining.

6. To represent at least 1,900 unadjudicated cases in the Superior Court

This objective was met and exceeded during Fiscal Year 81-82. What is remarkable is the relatively stability in the caseload in the Superior Court--1,960 in FY 80-81, 2,040 in FY 81-82. This general stability is reflected in the Superior Court statistics for all cases, public defender and private counsel during the last four years.

Felony Arraignments

1-06-78	1,269
7-12-78	1,283
1-06-79	1,337
7-12-79	1,208
1-06-80	1,464
7-12-80	1,434
1-06-81	1,820
7-12-81	1,428
1-06-82	1,097

Superior Court Sentences

1-06-77	1,381
7-12-77	1,226
1-06-78	1,305
7-12-78	1,520
1-06-79	1,467
7-12-79	1,372
1-06-80	1,552
7-12-80	1,428
1-06-81	1,587
7-12-81	1,610
1-06-82	1,559

(Source: C.M.S. printout)

We can, therefore, safely assume the caseload will remain at current levels for the foreseeable future.

7. To increase the number of Superior Court jury trials by 10-12%

We did not succeed in meeting this objective. Our goal was to try around 125 cases. We tried 109 cases. However, during Fiscal Year 82-83 we anticipate a substantial increase in jury trials, due largely to the no-plea bargaining section of Proposition 8. In the first quarter of Fiscal Year 82-83, this office tried 35 cases; and if this reflects a pattern, it could mean we will try 140 cases.

We believe that the health of a Public Defender's Office can, in no small part, be measured by the willingness of attorneys to take cases to trial. Plea bargaining, unfortunately, has become all too prevalent. An office that exclusively plea bargains will lose all perspective about the value of cases, and it will lose all trial expertise.

Plea bargaining often occurs for the wrong reasons. Some attorneys plea bargain because they do not want to trouble

themselves preparing a defense. Other plea bargain because they are afraid of facing a jury.

This office will remain insistent that more cases be tried: We will recklessly reject sound settlements and exposing our clients to serious penalties. We will try cases where our cients have strong defenses. We will also try cases where the clients would be not worse off by losing before a jury, rather than pleading guilty.

8. To decrease state prison commitments by 10%

We failed, and failed badly. This year, the number increased by 25% over the number in Fiscal Year 80-81; whereas in the last three years, we kept state prison commitments at a fairly stable level. Here is a breakdown of the state prison commitments for the last four years.

Number of New Felons at State Prisons	
1978	555
1979	531
1980	593
1981	816

(Source: Department of Corrections)

Public Defender Case State Prison Commitments (New Cases)	
FY 78-79	402
FY 79-80	390
FY 80-81	397
FY 81-82	538

With Proposition 8 in effect, we can expect, perhaps, more state prison sentences in felony cases. Proposition 8 increases penalties for felony defendants with prior serious felony records. This increases the exposure faced by a defendant in the Superior Court and creates pressure to settle on a state prison sentence to avoid a larger state prison sentence. Maximum efforts will be made to keep sentences as low as possible and to avoid long prison disposition.

But the trend which we are now experiencing is part of a state-wide trend which has been underway since 1975. It results from legislative action lengthening sentences, as well as Proposition 8, and also community attitudes which are hostile to the plight of criminal defendants.

9. To conduct at least 150 sentencing hearings per year

The sentencing hearing is the most under-utilized process of the San Francisco criminal justice system. Plea bargaining has meant, in the vast majority of felony and misdemeanor cases, that precise sentencing agreements are reached at the time the defendant enters a plea of guilty. Only minor details have been left open for the judge to decide.

However with Proposition 8's restrictions on plea bargaining, there will be fewer sentence agreements worked out before the time of sentence. Thus, attorneys will have to persuade judges to grant more lenient sentences through a presentation of evidence at a formal hearing.

Since August, the Public Defender's Office has had a pilot program to find sentence alternatives for felony defendants.

We have hired a first-rate paralegal, Barbara Fain, to develop thorough plans in lieu of state prison or county jail incarceration. Miss Fain conducts an in-depth interview and attempts to develop a suitable plan that will foster the client's personal or employment possibilities. If such a plan can be drawn, Miss Fain will attempt to identify and verify information about the defendant's background that would convince a judge that the client will not be a danger to the community. The plan will be presented, in writing, at a time of sentence and evidence will be offered in support of it.

We feel that this program represents a major step toward decreasing the state prison commitment rate and, more importantly, toward assisting our clients find a way back from a life of crime and personal uselessness.

V. MISDEMEANOR UNIT

Program: To represent indigent defendants in misdemeanor cases and in motions to revoke probation in misdemeanor courts

Program Cost: $613,15

This unit consists of a Head Trial Attorney as supervisor and 15 attorneys in six departments of the Municipal Court. The unit must provide constitutionally-mandated representation for the over ten thousand persons charged with crimes in the Municipal Court.

There were 11,762 cases handled by this unit. Of that number, 9,826 were cases initiated between July 1, 1981 and

June 30, 1982; and there were 1,936 motions to revoke. Table G indicates statistically the work.

TABLE G

Disposition of Cases--Misdemeanor Unit

1. New Cases

Convicted	3,471
Dismissed	2,473
Diverted per 1000, et seq.	2,137
Not disposed of	1,745
	9,826

2. Trials

Guilty all counts	27
Guilty of one or more counts ..	11
Not guilty	26
Hung	14
	78

3. Fiscal Year Comparison

F.Y.	New Cases	Pleas of Guilty-Convictions	Dismissals	Diversion	MTR
81-82	9,826	3,471	2,473	2,137	1,936
80-81	8,622	4,631	3,404	1,198	1,809
79-80	8,395	3,560	3,433	577	1,730
78-79	12,136	Not av.	Not av.	Not av.	Not av.

Charges - Municipal Court

Appendix B presents a complete breakdown of charges in the misdemeanor departments of the Municipal Court. Noteworthy is the large number of prostitution (647b), drunk driving (23152 V.C.), simple battery (242), and petty theft cases (484 P.C.).

MBO OBJECTIVES

1. To represent at least 8,500 new misdemeanor cases and over 1,500 motions to revoke

There was a 12.3% increase in the number of new cases during Fiscal Year 81-82, as compared to Fiscal Year 80-81. This trend, in part, reflects an increase of arrests by San Francisco police during the same period. The District Attorney's Office screens those arrests and files less than one-half of them.

As Table G indicates, there was a sharp decline in the number of misdemeanor filings during Fiscal Year 79-80 from the previous year (8,395 vs. 12,136). This was the result of better screening by the District Attorney's Office. However, the large number of dismissals in misdemeanor cases and the poor trial statistics (see Table G) suggest that too many misdemeanor cases are being filed.[10/]

Loose filing practices are causing the courts to be clogged with weak and unprovable cases. Under the circumstances, it is hard for all parties--the D.A., the P.D., the courts--to operate with a modicum of sanity.

Until and unless the D.A. tightens its screening even further, we can expect roughly 10,000 per year.

10/The magnitude of the problem has been illustrated. This was: if you exclude diversions from your disposition and take a total based on dismissals and convictions, the dismissal rate is still 41%.

2. To try 120 jury trials

In Fiscal Year 81-82 the number of jury trials decreased substantially. In the previous year 132 were tried, whereas this year only 78 were tried. This decrease was not limited to Public Defender cases. The Judicial Council Report by the Municipal Court showed in Fiscal Year 81-82 only 120 juries were sworn; while in Fiscal Year 80-81, as many as 169 were sworn.

We are not satisfied with these figures. We knew that jury trials demonstrate a willingness by Public Defender attorneys to fight for their clients. We know also that attorneys need the experience in the Municipal Court trials before going on the the difficult and professionally-taxing work in the Superior Court.

3. To provide 20 hours of training per attorney

We have required earlier the importance we attach to training. Fortunately, we have been able to provide first-rate training through the California Public Defenders' Association. In addition to these programs, Daro Inouye, the Head Trial Attorney for the Misdemeanor Unit, holds seminars on topical themes in the law or on matters of practical interest.

Last year we exceeded the 20-hours' target, and this year we will be ahead of schedule.

Our difficulty is finding the time to prepare for and to hold such sessions within the office.

Comment: Diversion

The Pretrial Diversion Program is under some criticism--both from the District Attorney and from Supervisor Quentin Kopp. The Project takes referrals from the Municipal Court of first-time offenders in misdemeanor cases. The referrals are based on the defendant's eligibility for the Project based on the absence of a previous criminal conviction. The court has the authority to make a referral of someone who might be ineligible but nevertheless, in the court's opinion, would benefit from diversion.

In one highly-publicized case a defendant was referred to the Project, despite his ineligibility, finished his diversion requirements, had this case dismissed and, months later, was arrested after the accident involving actress Mary Martin.

Supervisor Kopp criticized the action of the court in diverting this individual and called for the deletion of the Project's funding. In the alternative, Mr. Kopp called for the elimination of the omnibus clause which judges to refer persons who are technically ineligible.

In response to Quentin Kopp's actions, District Attorney Arlo Smith told the Project's director that should the Project not reform its guidelines, along with the lines suggested by him, he would use his newly-legislated power under Section 1001 P.C. and not allow the Project to continue to take court referrals. Presently, Mr. Smith and the Project's Management Committe are negotiating changes in the guidelines.

From the Public Defender's perspective, the Pretrial Diversion Project offers one of the most beneficial works within the criminal justice. The Project eliminates court time and court work of several thousand defendants every year. These are first offenders, low-risk individuals. Many of them could be proven guilty charge against them. Many of them could be acquitted. Rather than have these defendants contesting their innocence in an adversarial hearing, the court allows these defendants to "earn" the dismissal of their charge by performing community service work. Those who have violated the law do redemptive work and maintain a clean record. Those who were innocent are hardly injured by making such a contribution to their community.

Mistakes are sometimes made. Sometimes an individual is not thoroughly checked-out and allowed to take advantage of the diversion program. But the number of such mistakes is small; and in criminal justice work, with its pressures of volume and time, perfection cannot be guaranteed. The success of the Diversion Project can be demonstrated by the small number of persons re-arrested after completing diversion--approximately 11%.

What would happen if the Project folded, or if the number of people referred were drastically reduced?

We do know that the courts would be even overloaded, because the cases would largely find their way to the pretrial and trial calendars. We can safely assume that many of those charged would be dismissed, because an already-overworked

District Attorney could be more spread-thin. Can we really expect that an office with a 42% conviction rate would be able to improve its performance by the addition of, say, 2,000 to 2,500 new trial cases?

Comment: Infractionalization of Misdemeanors

Misdemeanor cases heavily tax the resources of the courts, the D.A., and the public and private defense bar. Although diversion programs relieve some of this pressure, most misdemeanor cases remain on court calendars for substantial lengths of time. At the stake is the stigma of any criminal conviction and the possibility of a jail sentence. The attorney in a misdemeanor case must prepare for the trial much in the same way as for a felony case.

The result can be seen in every Municipal and Justice courts in this state and in lower trial courts throughout the county. Courts are crowded, confused, distracted, and anarchical. Rational decision making frequently breaks down.

Projects, such as the Pretrial Diversion, provide only partial relief. The only answer is to look toward new solutions--referrals to community boards and infractionalization of misdemeanors. Community Boards are in practice in San Francisco, and they are written about extensively elsewhere.

Infractionalization of misdemeanor means that certain offenses, currently misdemeanors, would be downgraded to a non-criminal offense that would not be punishable by a jail

sentence. As a trade-off, the person charged would not be certified to a jury. In certain cases, the District Attorney might have discretion to file a case as a misdemeanor or an infraction in certain crimes and in the event of a second case for the same offense. These matters could be heard by a commissioner, without a D.A. and without an attorney.

The fact is that there are very few trials in misdemeanor and that there are comparatively few misdemeanor jail sentences. The Legislature should identify offenses where jail sentences are few and reduce the misdemeanors to offenses filable as infractions or as either infractions or misdemeanors. The precious judicial and legal resources could be devoted to more serious. The Legislature should give serious attention to exploring the idea of infractionalizing misdemeanors.

VI. JUVENILE UNIT

Program: (1) To represent juveniles in delinquency cases and in cases where the District Attorney seeks to exclude juveniles from the juvenile justice sytem

(1) To represent adults whose parental rights are being suspended or terminated

Program Cost: $484,577

The Public Defender's Office represents juvenile clients in the Juvenile Court at the Youth Guidance Center. Most of the Public Defender juvenile clients are charged with having committed offenses which, if the juveniles were adults, would

be a crime. In these proceedings the District Attorney files a petition pursuant to Section 602 of the Welfare and Institutions Code. The case is later heard before a referee or before a Superior Court judge.

The Public Defender also represents other juveniles who are alleged to have behavior problems. These juveniles are not charged with committing any acts which would be criminal in adult courts. Typically, these are children who are charged with truancy, with curfew violations, or with being beyond parental control. These are "status" offenders. Petitions pursuant to Section 601 of the Welfare and Institutions Code are filed in these cases. If these petitions are granted, the child is taken from the control of his or her parents.

In certain criminal type cases the District Attorney will attempt to exclude a juvenile from the juvenile court process and to have the juvenile prosecuted as an adult in an adult criminal court (pursuant to Section 707, et seq., Welfare and Institutions Code). If that action is taken, the juvenile is entitled to a hearing on whether or not it is proper to have the juvenile tried as an adult.

The Public Defender also represents parents in Juvenile Court where the Department of Social Services is attempting to suspend or to terminate the parents' custody over their children.

The Public Defender is a forceful and a zealous advocate for the prosecution of the rights of the juvenile. Juvenile cases are adversary proceedings, and the attorney must use all

of his talents in presenting the factual and the legal defenses on behalf of the juvenile client. At the same time, the Public Defender must also be sensitive to the special problems confronting a juvenile offender. Juvenile law has become an entire specialty in itself. Attorneys in the juvenile courts must be able to identify emotional and educational difficulties and to explore the alternatives which exist outside of the legal system. The lawyers must utilize fully all of the community-based agencies which provide social or psychiatric assistance.

Presently, the Public Defender coordinates its activities with such organizations as Real Alternatives, Youth for Services, and Rafiki Masaada. These are groups which provide the special help needed by troubled minors. To address the special needs of the juvenile, the Public Defender also employs two social workers. The result of these approaches, and, in addition, because of the assistance of professional social workers and psychologists, has been to reduce the number of commitments of juveniles to the Youth Authority.

TABLE H

Juvenile Unit Work

Overall, the Juvenile Unit handled 2,418 petitions.[11/] The petitions were for the following:

Section 601 W&I	139
Section 602 W&I	2,470
Section 707 W&I	12
Section 300 W&I (parental neglect) .	202
	2,823

TABLE I

Fiscal Year Comparison

	1978-1979	1979-1980	1980-1981
601	127	141	139
602	2,119	1,410	2,470
707	NA	19	12
300	225	325	202
	2,040	2,895	2,823

Commitments to CYA

Fiscal Year 1978-1979 - 96

Fiscal Year 1979-1980 - 81

Fiscal Year 1980-1981 - 89

Fiscal Year 1981-1982 - 90

Commitments to Log Cabin Ranch

Fiscal Year 1979-1980 - 136

Fiscal Year 1980-1981 - 95

Fiscal Year 1981-1982 - 102

11/Not included in this number are 211 cases of "transfer-in" juveniles.

MBO OBJECTIVES

1. To represent juveniles in at least 2,200 cases petitioned under 601, 602, and 707 of the Welfare and Institutions Code, and 300 adults in Section 200 Welfare and Institutions Code Proceedings

According to Table I, the caseload at the Juvenile Unit has not changed dramatically during the last three fiscal years. We expect the level of work to remain the same.

2. To utilize the social work staff in at least 225 delinquency cases

The unit employs two full-time social workers. They interview clients, render evaluations, and in many cases provide disposition plans. They do this work in 601, 602, and 707 cases. The Head Trial Attorney at Juvenile, Gregory Bonfilio, feels that their work has been successful in reducing Log Cabin and CYA commitments and in persuading the court not to exclude the juvenile from the juvenile system.

The social workers have an important advantage: the information is conveyed within the setting of the lawyer-client relationship. By making the meaning of that fact known to the juvenile, the juvenile is more likely to be candid about his/her problems. The evaluations do not suffer from a defensive-minded and timid person, who is unsure whether his/her statements will be ultimately used against him/her.

We feel that the program has been successful in reducing recidivism and needless incarceration.

Last year we utilized social work staff in 638 delinquency cases, thereby exceeding over MBO objective.

3. To involve community-based agency participation in 350 juvenile cases

There exists a rich network of community-based agencies, many existing on private funding, others on public and quasi-public funding. They have trained counselors and instructors and serve specialized clientele; i.e., Hispanic youth in the Mission by Real Alternatives. Currently, we make great use of these programs; we wish to increase their involvement.

In Fiscal Year 81-82 we involved community-based agencies in 299 cases--51 short of the target.

VII. MENTAL HEALTH UNIT

Program: (1) To represent the mentally ill in conservatorship proceedings

(2) To represent the retarded in proceedings relating to their treatment and placement

(3) To represent the insane in proceedings for the restoration of their sanity

(4) To represent those adjudged mentally-disordered sex offenders in proceedings relating to their placement and treatment.

Program Cost: $281,454.83

The Public Defender is the principal attorney in the community for the mentally ill. Most of the work of the Mental Health Unit is done in the defense of petitions to establish mental health conservatorships pursuant to Section 5100, et

Welfare and Institutions Code. This conservatorship petition is the legal procedure for establishing judicial control over a person who is alleged to be a danger to himself or others or who is gravely disabled to the extent of lacking the ability to provide food, shelter, and care for himself/herself. If the petition is granted, an individual may be placed in a state hospital or in a local facility, whichever the court deems appropriate.

In these cases the Public Defender is appointed to represent the proposed conservatee. As the attorney for the proposed conservatee, the Public Defender must review the medical reports, witnesses, and explore alternative placement if the client contests the hearing.

The Public Defender also represents persons in probate guardianships pursuant to Section 1470, et seq. These proceedings are of three kinds: (1) for persons not particularly a danger to themselves but who have handicaps, such as epilepsy, autism, or mental retardation; who need assistance but who are not disabled to an extent that would warrant a mental health commitment under Section 5500, et seq., Welfare and Institutions Code; (2) persons who are under mental health commitments who need guardian control of their property; (3) other persons who have property and are unable to care for their property.

Until Brown v. Superior Court (1981) 119 Cal.App.3d 189, the Public Defender represented probate conservatee irrespective of the ability of the estate to defray the costs

of counsel. But that decision, in effect, stated that the ability of the estate to pay for counsel for the conservatee had to be considered before the Public Defender could be appointed. This decision will mean that the taxpayer will not represent conservatees whose guardianships have substantial assets.

The Mental Health Unit also represents mentally-ill clients who have been sent to state hospitals. These involve conservatees committed under Section 5250 of the Welfare and Institutions Code who have a right to periodic review of their status and their treatment, clients who have been found incompetent to stand trial under Sections 1368-70 of the Penal Code, those who have been found not guilty by reason of insanity under Section 1027 of the Penal Code, mentally disordered sex offenders pursuant to Section 6300 of the Welfare and Institutions Code, and mentally retarded dangerous persons under Section 6500 of the Welfare and Institutions Code.

These clients must be regularly visited and interviewed. If the state hospital makes an inappropriate recommendation for a patient, the Public Defender must bring that fact to the attention of the court. If it is necessary, a jury trial may be held to determine whether or not a person should be kept in a state hospital or whether or not his/her parole should be revoked.

Comment: A.B. 3454

In last session of Legislature, AB 3454 was enacted. This legislation will require a quasi-judicial hearing for all

persons involuntarily hospitalized after a 72-hour period. The hearing must take place within seven days of the initial commitment. They will be held at the hospitals where the patient is detained. The patient has a right to notice of such hearing spcifying the reasons for the detention and the right to a lawyer or an advocate.

The right to a lawyer or an advocate, in effect, mandates the Public Defender to provide legal counsel at such hearings. Section 22706d of the Government Code states, in pertinent part:

> "Upon request, or upon order of the court the public defender shall represent any person who is not financially able to employ counsel in proceedings under Part I (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code."

Since the hearings under AB 3454 are "proceedings" under Division 5, involving Sections 5250, 5252-5651.3 of the Welfare and Institutions Code, clearly, the Public Defender, in the absence of any other lawyer, or advocate group, must be appointed to represent persons detained.

AB 3454 was the Legislature's response to Doe v. Gallinot (1979) 486 F. Supp. 983, wherein the federal required such a hearing process as a condition of further detention of a mental patient. The necessity of providing legal counsel at their hearings is not a matter of discretion, or of a debatable desirability: it is a requirement of law.

In meeting this requirement of law, the Public Defender is heavily taxed. The hearings will occur at six different

hospitals and must be conducted twice a week. The patients must be interviewed before the hearing if the representation process is to be more than pro forma. According to best estimates, the number of patients will range between 30 and 50 a week. Thus, the Public Defender's Office must travel throughout the city on a continuous basis to meet this constitutional obligation. New resources are definitely required.

TABLE J

Summary of Mental Health Unit's Work

Statistical Summary

Conservatorship hearings pursuant to 5500 W&I C (new)	535
Conservatorship hearings pursuant to 4400 W&I C (renewed)	425
Writs of Habeas Corpus	89
Probate guardianships	13
30-Day Certification (dangerous persons)	13
6500 W&I C (dangerous retarded)	4
Special placement hearings	37
Criminal cases	18
Total Cases	1,134

TABLE K

Disposition of Mental Health Cases

1. Writs of Habeas Corpus[12/]

Granted	16
Denied	73
	89

2. 5250 W&I Conservatorships (new)

Granted	226
Denied	309
	535

3. 440 W&I Conservatorships (renewed)

Granted	271
Terminated ..	154
	425

4. 90-Day Certifications (dangerous persons)

Granted	9
Denied	4
	13

5. 6500 Petitions

Granted	3
Denied	1
	4

12/ There were an additional 241 petitions withdrawn by mental health clients.

TABLE L

Comparison Between Fiscal Year 1980-1981
and Fiscal Year 1981-1982

For Mental Health Unit

	Fiscal Year 1981-1982	Fiscal Year 1980-1981
LPS Conservatorships	535	609
LPS Renewals	425	436
6500 Placements	26	21
Criminal Cases	18	21
Probate Cases	13	47
Placements Hearings	37	57
Total Cases	1,054	1,191
Interviews to advise persons of legal rights on 14 certifications	2,013	1,726

VIII. RESEARCH UNIT

Program: (1) To prepare writs and appeals and legal memoranda in complex cases

(2) To provide research for cases in litigation

(3) To provide technical assistance in writs and appeals

Program Cost: $103,790

The newest administrative component of the Public Defender's Office is the Research Unit. It is located in the Public Defender library. One principal attorney, Grace L. Suarez, one staff attorney, and one paralegal work there. The unit writs briefs for writs and appeals, researches the law for cases in

trial, and provides technical assistance to attorneys in the preparation and filing of pleadings.

The unit has a small library. It has an indexed brief bank, a collection of jury research material, and a micro-fiche file which contains cases of the State Public Defender. The unit also has a LEXIS Computer Terminal which produces legal citations upon inquiry and summaries of cases.

The value of the unit cannot be overstated. Its work has enabled the office to generate on an average of eight appellate briefs a month in writs and appeals. The specialization of the research function in the office permits the trial attorneys to devote undivided attention to the factual presentation of the case. It places the burden of research on a group of lawyers and paralegals who are thoroughly familiar with changes in the law.

The unit's capability was most clearly demonstrated during the first days of Proposition 8. That initiative contained laws which had the most profound effect on the criminal justice system, and it became effective immediately. Grace Suarez has training materials, form motions, memoranda of law, as well as research support.

The most visible impact came when the Municipal Courts attempted to hold preventative-detention hearings. Ms. Suarez filed a writ, secured a peremptory writ, and restored bail procedures to those of the days before Proposition 8's passage.

The unit's work in this area and in other has made it a leader in criminal defense.

MBO OBJECTIVES

1. To produce 360 documents (briefs, motions, writs) a year and to increase the standardized documents on file by 15%

During Fiscal Year 81-82, the Research Unit alone produces 247 motions (995 P.C., 1538.5 P.C., etc.), 37 memos of law, 21 appeals to the Superior Court Appellate Department, 37 writs to the Superior Court, Court of Appeal, and Supreme Court, and 188 written items of reward. Thus, the target of 360 was exceeded with a total of 530 documents.

2. To reduce preparation time for briefs and motions

		Average Time	
		July, 1981	July, 1982
a.	Appeals	15 days average	5 days average
b.	Writs	5 days average	4.3 days average
c.	Motions	10 days average	6.7 days average
d.	Memos	3 days average	2 days average

IX. INVESTIGATION UNIT

Program: (1) To obtain information about the facts and circumstances of the cases of clients represented by the Public Defender

(2) To provide necessary support services to attorneys in the office in furtherance of the representation of those cases

Program Cost: $409,077.25

In the 1976 Report of the National Commission on Defense Services, the following statement was made:

> "Criminal investigation is an essential element of criminal defense. Offices lacking adequate investigative staff tend to neglect the investigative function and rely on the state's version of witness statements and other evidence. It is not cost-effective for lawyers to do all of the investigation connected with a case. Moreover, where lawyers conduct investigations, it may be necessary to have an investigator along to refute charges of impropriety and to have a witness who can testify at trial if necessary.
>
> Secondly, since investigation is increasingly becoming a professional skill requiring professional expertise, investigators should be hired who have the professional skills required. Professional investigators greatly improve the overall quality of service in a defender office.
>
> In order to ensure that investigations are conducted in every case where there is a factual question not subject to objective determination, an adequate attorney-investigator ratio is necessary. At least one investigator should be employed for every three staff attorneys. This figure is based upon the experience of defenders from coast to coast." (At p. 333.)

The Public Defender's Office has had an investigative staff since 1955. But until 1977 the staff was small. In 1977 Public Defender Bob Nicco acquired 12 additional investigators funded through C.E.T.A. Between 1978 and 1980 this number

gradually decreased with the scaling down and eventual elimination of C.E.T.A. In 1980 the Mayor's Crime Package provided the office with 11 new temporary investigative positions, in addition to the five permanent investigators. Although the ratio of attorneys to investigators is not the 3-1 recommended by the National Commission (supra), we are better able to meet the investigation demands of the office.

The Investigative Unit is supervised by Head Trial Attorney Gordon H. Armstrong. The unit is located across the street from the Hall of Justice at 38 Boardman Place. In addition to five permanent investigators and ten temporary ones, there are two support personnel.

An investigation commences when an attorney makes a written request. The request may ask that a witness be located and interviewed, that the crime scene be photographed, or that a document be located. A suspense date is set for the completion of the investigation. Supplementary requests may be made. The same investigator will be assigned to the case throughout the life of the case.

Solid investigation is absolutely invaluable to effective representation. It can win the case for the lawyer. It can provide exculpatory evidence; it can find contradiction in the prosecutor's case. It requires persistence, ingenuity, and a knowledge of crime. The major emphasis of this office will be directed toward improved investigation as a means of delivering better legal service.

Fiscal Year Comparisons	Cases Investigated
1978-1979	1,903
1979-1980	1,107
1980-1981	1,583
1981-1982	1,362

MBO OBJECTIVES

1. To investigate at least 1,100 cases

This goal is probably too modest. During Fiscal Year 1980-1981 the unit investigated over 1,300 cases. This was up from 1,107 and less than the number in Fiscal Year 1978-1979. The fewer number of requests in 1979-1980 probably reflected the loss of C.E.T.A.-funded investigators. Lawyers, aware of this cutback, were less likely to submit requests, knowing that the unit could not satisfy all of them.

2. To cut response time

Investigation must be completed in a timely fashion. Subpoenas must be served promptly. With the new personnel, we are confident that the demand for prompt investigation can be met.

3. To provide 20 hours of training per year per investigator

Criminology is a field of expanding knowledge. New information about fingerprints, blood serology, stress analysis, and eyewitness identification is emerging almost

daily. A professional defense to a criminal case requires a knowledgeable investigator who is aware of new techniques and modern criminology. Consequently, this office must undertake a continuous re-education of its investigative staff. However, during Fiscal Year 81-82 very little time was spent in training investigators. However, under the leadership of Gordon Armstrong, we are confident that continuing education of investigator will be a permanent part of the work of this office.

X. OTHER MATTERS OF INTEREST

1. Affirmative Action

The Public Defender's Office exists in a multi-racial and multi-cultural community. Its clientele is largely of Third World origin. As an office that is in the midst of the struggle for human rights, the Public Defender's Office must be an example of equal opportunity for individuals of different races, sexes, and sexual preferences. Moreover, the presence of persons of all races, sexes, and sexual preferences gives the Public Defender the benefit of diverse backgrounds, languages, and cultures; and it better equips this office to understand and communicate with different peoples who make up the clientele of this office.

In 1980 and 1981 we submitted to the Civil Service Commission an affirmative action plan that set forth targets for increased participation at all levels of employment of minorities, women, and gay and lesbian people.

We are happy to report that with certain minor exceptions, those targets have been met. This office today, in its professional and support staff, is representative of the community it serves. We will continue our efforts to bring talented minority persons and to ensure equal opportunity to all individuals without regard to sexual preference.

2. Volunteer Lawyers

The Public Defender's Office benefits from the participation of volunteer lawyers from major law firms, such as Pillsbury, Madison, and Sutro; and Morrison and Foerster. This year both law firms sent experienced practitioners to work on a daily basis for specified periods. Their work was outstanding.

Throughout 1983, the volunteer program will continue.

3. Proposition 8

On June 8, 1982 the California electorate approved Proposition 8, the so-called Victims' Bill of Rights. This was an initiative containing a package of 13 or more important provisions affecting the criminal justice system.

Among other things, Proposition 8 placed restrictions on plea bargaining in felony cases, made bail discretionary, eliminated O.R. release in serious felonies, increased prison sentences for previous offenders, abolished California's independent state grounds for the exclusion of illegally-obtained evidence, abolished diminished capacity, restored the M'Naughton rule, provided for victim notification at sentencing and parole hearings, prohibited 18-year-olds from the

California Youth Authority, allowed prosecutors to introduce prior felony convictions at trial, and created a "right to restitution" and "right to safe schools."

Proposition 8 took effect on June 9, the day after the election.

It is too early to assess the impact of Proposition 8. Many of its provisions will be the subject of extended litigation. But, as we have mentioned earlier, the initiative's limitation on plea bargaining and the longer sentences mandated by it are already having their impact. The restriction on plea bargaining in the Superior Court has meant that plea bargaining must be done in the Municipal Court, usually within weeks of the defendant's arrests. The restriction on plea bargaining is causing more trials. The initiative provision for longer sentences for those with a previous conviction of a serious felony who are again charged with a serious felony have quite naturally caused more people to be sent to state prison and longer periods of time.

Early as it may be, we can predict that Proposition 8 will drastically alter the practice of criminal law in California. Prosecutors will find it easier to convict. Evidence illegally obtained will be easier to admit. More people will end up in prisons.

The challenge of Proposition 8 to the defense attorney is obvious. The defender must make the right decision whether to plead or not, and at the right time. The defender must be as prepared as he/she would be for trial and must be thoroughly

equipped with trial skills. There is no room for error, for inadequate performance, for miscalculations in plea negotiations. The malpractice possibility is enormous, but the possible harm to the client will constantly loom as an even greater danger.

No defense office anywhere is a match for Proposition 8. This office is no different. Somewhere in those 21,000 cases, mistakes--big mistakes--are going to be made. But our responsibility is to face Proposition 8 head-on as a centralizing task, as a source of our total resources, for our clients. This is what we intend to do:

(1) Litigate every provision

Proposition 8's provisions on almost every subject; e.g., diminished capacity, search-and-seizure, the admission of prior convictions, are open to constitutional challenge. Our Research Unit and the attorneys will be alert to identify issues for constitutional challenge. That challenge will be made at every level.

(2) Better training

The attorneys must be knowledgeable of the law and skilled in courtroom techniques. A maximum amount of training will be offered and required. The training of lawyers will be reported on a quarterly basis.

(3) Better supervision

The lawyers must have the benefit of advice and counsel from their supervisors. Decisions affecting the lives of clients cannot be made casually, cannot even be made by one

attorney. Supervisors must approve crucial decisions on plea bargains and must follow the work of individual lawyers.

Presently, computer data is used to review every felony disposition in the Superior Court and the work of every felony attorney. Jury trial data is also available on a monthly basis. Caseload data is available every two weeks. With contemporaneous data, we can better manage our work and insure quality control--for our clients' sake.

(4) Alternative sentencing

The Public Defender has to be exhaustive in the representation of the client at the sentencing stage. No longer will the Public Defender be able to finalize the vast majority of serious felony cases through plea bargaining. Proposition 8 has undone that possibility. Now, the Public Defender must undertake exhaustive searches for credible alternatives to state prison which can appeal to the court as a realistic and credible alternative to prison.

The Alternative Sentencing Program, directed by Barbara Fain, is a response to that need. It promises to become one of the most hopeful developments in the recent memory of this office. If expanded, it can save hundreds of clients from state prison who can live productive lives in society.

These are some of our responses to Proposition 8.

(5) Stronger investigation

Investigation is the name of the game. Investigation is probably as important as any single aspect of case preparation. Investigation is crucial to every phase of the

representation, whether that be trial work, plea negotiation, or the litigation of points of law. If Propostion 8 increases the pressure against the defense, an important part of the response is to strengthen the investigative resources.

This will be done. We must train investigators so that they can work more in tandem with the attorneys.

APPENDIX A

1981-82 FELONY CHARGES IN SUPERIOR COURT

32 PC	2	245a PC	217
67 PC	1	245b PC	24
68 PC	1	246 PC	3
69 PC	1	261.2 PC	20
118 PC	6	261.3 PC	8
136.1 PC	2	266h PC	1
137 PC	0	266i PC	2
148 PC	0	273 PC	21
182.1 PC	3	278 PC	1
182.4 PC	0	278a PC	32
187 PC	55	288b PC	1
192.2 PC	3	417 PC	2
192.3 PC	3	447 PC	2
203 PC	3	449 PC	0
207 PC	6	451a PC	3
209 PC	0	451b PC	18
211 PC	234	451d PC	0
217 PC	0	452 PC	1
220 PC	5	452b PC	0
236 PC	4	453 PC	0
240 PC	1	455 PC	2
241 PC	0	458 PC	0
243 PC	8	459 PC	339

470 PC	11	664/10851 PC	1
472 PC	0	653 PC	0
475a PC	76	666 PC	20
475b PC	9	667 PC	0
476 PC	5	4379 PC	0
483 PC	1	4390 PC	2
484b PC	1	4530 PC	1
484f PC	13	4532a PC	4
484f.2 PC	2	4532b PC	4
484g PC	1	4573 PC	3
487.1 PC	74	12020 PC	13
487.2 PC	113	12021 PC	37
487.3 PC	8	12025a PC	2
487.5 PC	1	12025b PC	8
494b PC	1	12303.2 PC	3
496 PC	104	12560 PC	0
502 PC	0	10851 VC	73
520 PC	1	23101 VC	5
524 PC	1	2001a VC	6
594 PC	2	23122.5 VC	0
664/187 PC	18	23153.a VC	1
664/211 PC	35	11483 W/I	3
664/261 PC	2	11350 H&S	59
664/459 PC	28	11351 H&S	30
664/487.1 PC	4	11352 H&S	27
664/487.2 PC	16	11355 H&S	4
664/496 PC	33	11357 H&S	6

11359	H&S	23
11360	H&S	4
11366	H&S	1
11368	H&S	0
11375	H&S	0
11377	H&S	111
11378	H&S	35
11379	H&S	10
11382	H&S	0

APPENDIX B

1981-82 MISDEMEANOR CHARGES

	CHARGED	PLEA GUILTY	DISMISS	OTHER
148	664	81	481	102
242	866	212	616	38
242	192	29	177	14
245	200	30	105	65
314	59	14	24	21
315	17	3	7	7
318	38	3	30	5
374	31	11	24	4
415	303	287	258	
417	171	42	109	20
459	165	40	92	33
466	130	20	87	23
487	222	78	127	17
488	719	320	455	
537	121	47	103	29
594	421	126	333	
602	259	89	200	30
647A	157	8	104	45
647B	808	331	365	112
647F	804	252	538	14
666	139	117	67	45
12020	124	32	57	35
12025	140	42	40	58
12031	124	21	54	49
20A MPC	4		1	3
20G MPC				
21 MPC	11	2	14	5
1291 MPC	247	46	152	49
1208 MPC	8		5	3
4140 MPC	7		4	3
4143 BP	284	100	130	54
25661 BP	4	2	3	
25662 BP	2	1		1
11350 HS	62	5	18	39
11357 HS	452	123	342	
11360 HS	46	12	46	
11377 HS	149	31	93	25
11550 HS	72	8	30	34
10851 VC	70	24	34	12
10852 VC	95	33	65	
14601 VC	533	149	112	272
20002 VC	660	112	207	341
23101 VC	6	11	5	
23102 VC	2,608	719	314	1,575
23103 VC	331	203	48	80
12951 VC	1,635	16	446	1,173
2101 UI	47	12	26	11
Misc.	4,405	967	2,539	899

ANNUAL REPORT
OF THE
SAN FRANCISCO PUBLIC DEFENDER

1982-83

JEFF BROWN
PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

HALL OF JUSTICE
ROOM 205, 850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103
(415) 553-1671

JEFF BROWN
Public Defender

PETER G. KEANE
Chief Attorney

November 25, 1983

Honorable Dianne Feinstein
Mayor, City and County of San Francisco
City Hall, Room 200
San Francisco, CA. 94102

Dear Mayor Feinstein:

Re: Annual Report of the Office of the Public Defender for Fiscal Year 1982-83

Enclosed please find the Annual Report of the Office of the Public Defender. The report contains a detailed description of the work of this office. We have set forth each of the major programs of the office, their expenditures, their objectives, and their performance. We have made specific recommendations for change.

Finally, we have presented a detailed discussion of the so-called "Court Reform Intitiative."

The highlights of the Annual Report are as follows:

--- The Public Defender caseload has stabilized. There seems to be a decrease of misdemeanor cases which is offset by additional mental health and parental custody cases.

--- There is a crying need for new computer software. This will involve a capital outlay for the rewrite of a software program for Hall of Justices cases. Hopefully, the rewrite will assist in the integration of the Court Management System with Wang.

--- Conflict costs are rising, although the number of conflict cases remain about the same. The City needs accurate, up-to-date information on conflict cases, and it might experiment with full-time conflict lawyers.

--- The Court Reform Initiative will do serious harm to the administration of justice. There is serious question whether prosecutors will be aided by it.

--- The City should select now a telephone system that will cut long-distance costs.

It has been a busy year. The office is making steady progress in the improvement of its services. We are on target in the fulfillment of our primary goal of becoming the best Public Defender's Office in the United States.

Sincerely,

Jeff Brown
Public Defender

JB:cps

Enc.

ANNUAL REPORT

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

FISCAL YEAR 1982-1983

JEFF BROWN
PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

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INTRODUCTION

This Annual Report is a statement of the work of the Public Defender's Office. It is a description of the jurisdiction of the office and a record of the expenditures, programs, program costs, and performance objectives for this department of city government.

The Public Defender is the lawyer for people who are charged with crimes who do not have money to hire their own lawyers. This involves the representation of 20,000 persons every year. To carry out that responsibility, the Public Defender has a staff of 70 lawyers and another 38 support personnel.

Throughout this detailed report, we hope the reader keeps in mind the principal concern of this department--every client must get the highest quality of representation. The task of every employee, whether department head or telephone operator, is to ask this question--is there anything more, within reason, we could do for the man or woman who uses our services?

The task of representing clients in this office, as this report will show, involves much more than a lawyer preparing a case and going to court. The task involves a delivery system where coordination and management are critical. There are 110 employees, and the proper and efficient distribution of work assignments for each person is essential. In order to meet the demand of effectively representing each client's case, an administrative structure exists which distributes the workload

and which supervises performance of that work. A series of goals and objectives have been developed for the organization of the office structure. These goals are geared to all activities of the office, and these objectives relate to all areas of supervision and management.

Each goal is a broad, organizing principle for action and for reflection about the work and about the conduct of the office. Each objective is a specific target which is measured four times a year.

The objectives have two functions:

1. To insure that the day-to-day work of each section of the office is being done (output objective);
2. To improve the quality of that work (performance improvement objective).

An example of goals would be: "To insure the highest quality of representation." An example of an objective, such as for the Felony Section, would be: "To handle 2,000 felony cases this year" (output) or "to reduce state prison sentence" (performance improvement).

This Annual Report will be divided into discussion of each of the programs. The Report will describe the program costs, program objectives, and will explain how each of the objectives is measured. As a result, the reader will see the successes, and shortcomings, of the department. We also make specific recommendations for change.

OVERALL OFFICE GOALS

The overall goals of the office are:

1. To insure that each defendant receives competent and zealous representation;
2. To maintain the highest professional and ethical standards on the part of each employee of the department;
3. To insure that the delivery of legal services be as economical as possible without sacrificing the quality of those services;
4. To maintain public respect for the public defender system.

Everything that is done in the Public Defender's Office is designed to bring about these goals. Every objective is a restatement of practical ways to achieve these goals.

I. JURISDICTION

Section 33 of the Charter:

> "[The Public Defender] shall immediately, upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give advice to a person charged with the commission of a crime."

The Public Defender is a creature of the Charter of the City and County of San Francisco. The Charter provides that the Public Defender will represent persons who have been

charged with criminal offenses and who are without funds to pay for a privately-retained lawyer.[1]

In addition to this specific grant of power by the Charter, the California Government Code also authorizes counties, such as San Francisco, to establish public defender offices.[2] The Government Code sets forth the types of cases which can be handled by a County Public Defender. These include:[3]

(1) Criminal cases upon request of the defendant or by appointment of the court;

(2) Contempt cases;

(3) Appeals;

(4) Actions for the collection of wages or other demands against a person for under one hundred dollars;

(5) Defense of individuals in civil litigation where a person is being harassed or persecuted;

(6) Cases involving mental health guardianships and conservatorships;[4]

(7) Juvenile cases.

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[1] Charter Section 33

[2] Government Code Section 27706

[3] Ibid.

[4] Probation Code Section 1471 also provides for public defender appointment in probate guardianships under specified conditions.

The Welfare and Institutions Code also provides for the appointment of attorneys for indigent parents whose custody rights to their children are being subjected to proceedings for suspension or for termination of those rights.[5/]

The law, thus, provides for public defender representation in a wide spectrum of activities. Although the great bulk of the office's activities are in the criminal courts, the office is also quite active in representing persons in mental health and in juvenile cases.

II. OFFICE STRUCTURE, STAFF, BUDGET, AND WORKLOAD

1. Office Structure

The executive officer of the Public Defender's Office is the Public Defender. The Public Defender is elected every four years. The Public Defender appoints all Deputy Public Defenders and a Confidential Secretary.[6/] These employees serve at his pleasure. The balance of the staff, which includes investigators, secretarial, and other support personnel, are selected through Civil Service rules.

The Chief Attorney is the second executive officer of the department. The Chief Attorney is the person to whom all other supervisors directly report. The Chief Attorney is Acting Public Defender should the latter leave the state.

[5/]Sections 634 and 317 of the Welfare and Institutions Code.

[6/]Charter Section 3.47

There are six administrative units in the Public Defender's Office. Five of these six relate directly to legal representation and are under the direction of supervising attorneys. These include:

(1) Misdemeanor Unit: 18 attorneys in 6 Municipal Courts.

(2) Felony Unit: 34 attorneys in both the Municipal Court (Felony Division) and in the Superior Court and a sentencing alternative specialist.

(3) Mental Health Unit: 5 attorneys, 2 investigators, and a secretary.

(4) Juvenile Unit: 7 attorneys, 1 investigator, 2 social workers, 3 clerical-secretarial personnel.

(5) Research Unit: 2 attorneys and 1 paralegal.

The other two supervisory units are the Administrative and Investigation Units. These are supervised by the Executive Assistant and by a Head Trial Attorney, respectively.

2. Staff

The office has an authorized strength of 110 employees. Under the Temporaries Agreement, it is anticipated that every employee will have permanent civil service benefits by the end of the fiscal year. The breakdown of staff positions is as follows:

Attorneys	70
Investigators	13
Executive Assistant	1
Legal Steno	3
Clerk Steno	2
Transcriber Typist	1
Senior Clerk Typist	2
Clerk Typist	2
Telephone Operator	2
Senior Legal Process Clerk	3
Legal Process Clerk	7
Court Alternative Specialist	4
	110

The Public Defender budget for 1983-84 is $5,099,091. Of that figure, more than 92% is spent on personnel costs in salaries and in fringe benefits. Table A provides a complete expenditure breakdown.

This year's budget represents a 12% increase over the budget for 1982-83 (from $4,486,715 to $5,099,091). The increase is due largely to two factors: (1) salary standardization, and (2) a large increase in fringe benefits. The fringe benefit cost increase came about as a result of the "Temporaries Agreement" of 1983, in which the City and County and the public employment unions agreed that civil service positions held by temporary employees shall be filled with civil-service-selected employees.

The Public Defender budget is now totally derived from local funding. This year the Governor blue-penciled one of the two remaining state subventions for public defender offices. The subvention consisted of $770,000 for local counties under Section 987.6 of the Penal Code which, in past years, provided as much as $33,000 to San Francisco for the cost of public defender services. The other subvention, $71,000 for juvenile social workers in the Public Defender's Office under A.B. 90, still remains in effect.

As Table B indicates, there has been a major change in Public Defender funding since 1978-79. At one point, the federal government had funded, through the Comprehensive Emergency Training Act (CETA), as much as 50% of the personnel costs of the Public Defender's Office. With the elimination of CETA and of other out-of-county expenditure sources, the City and County has had to gradually assume the funding of these Public Defender services.

Table C details the programmatic costs of the Public Defender. The greatest part of the expenditures, as is shown, is for felony representation. Both the complexity of felony cases and the consequences which are involved for the client require that nearly half of the attorneys work on felony cases. In addition, since felony representation requires the most experienced lawyers, the felony attorneys are consequently the highest paid.

TABLE A

Cost Breakdown

Salaries	$3,757,121	
Fringes	949,618	
Salaries & Fringes Subtotal		$4,706,739[7]
Expert Witness	$ 120,000	
Contracted Services	45,200	
Travel	1,000	
Other Services	36,405	
Material and Supplies	18,495	
Rental of Property	14,700	
Equipment Maintenance	1,332	
Equipment Purchase	9,000	
Equipment Lease/Purchase	12,307	
Police Dept. (use of Wang Word Proc.)	112,293	
Real Estate	1,000	
Central Shop	18,450	
Management Training	670	
Reproduction	1,500	
Subtotal	$392,352	
Total Costs		$5,099,091

[7] Not included is $18,000 from a special grant for the employment of a court alternative specialist under the San Francisco Foundation.

TABLE B

Comparative Budgets 1978-79

	78-79	80-81	81-82	82-83	83-84
Ad Valorem	2,201,463	1,207,211	2,938,032	4,415,465	5,026,091
C.E.T.A.	Not avail.	528,892	416,125	---	---
Title II (Community Development)	---	162,076	206,573	---	---
A.B. 90	66,000	73,739	52,751	71,000	73,000[8]
Total -	Not avail.	1,971,918	3,613,481	4,486,465	5,099,091

[8] Estimated

TABLE C

Program Costs

Public Defender, Chief Attorney & Administration -	$ 480,077.96
Felony	1,866,766.00[9]
Misdemeanor	881,388.00
Mental Health	327,860.91
Juvenile	558,175.00
Research	124,697.86
Investigation	418,094.00
Total	$4,657,059.00

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[9] Including $18,000 in salaries and fringes from S.F. Foundation for a court alternative specialist.

3. Summary of Caseload

The total number of cases represented by the Public Defender's Office in FY 82-83 was 21,068.[10/] An itemized breakdown is set forth in Table D.

TABLE D

Superior Court Felonies (Opened in FY 82-83)	
Arraignments	1,115
Certifications	522
Motions to Revoke	459
	2,096
Municipal Court Felonies	5,175
Extradition	135
Total Municipal Court and Superior Court Felonies	7,406
Less number of felony cases held to answer or certified to Superior Court	1,637
Total Felonies	5,769
Misdemeanors	
Arraignments	8,375
Motions to Revoke	1,218
Total Misdemeanor Cases	9,593
Juvenile Cases	
Juveniles	2,306
Adults	320
Total	2,626

10/A case is defined as: a charge, or series of charges, arising out of a single accusatory pleading or consolidated accusatory pleadings. Thus, if a defendant were charged in one

Mental Health

Conservatorships	808
Conservatorship Renewals	479
Post-Certification Petitions	23
Medical Consent Petitions	27
6500 W&I Hearings	11
Rehearings	75
Habeas Corpus Hearings	306
Certification Hearings (Doe v. Gallinot)	1,304
Criminal Cases	47
Total Cases	3,080
Grand Total	21,068

The figures represent a very conservative count. They do not include the countless individuals interviewed who do not go to court, nor do they represent individuals assisted in various ways without a file being opened.

4. Caseload Comparisons 1978-79 to 1982-83

Table E represents a caseload comparison over a period of four years. What is remarkable is the degree of overall consistency: between FY 78-79 and 82-83, there has been a mere

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(Cont'n. of Fn. 10)

complaint with five counts, that would be considered one case. Wherein, if two defendants were charged in one complaint, that still would be one case. Finally, if two complaints were consolidated, there still would be one case.

3% change in the caseload. And with the exception of the Mental Health Section, most individual work sections have maintained a very predictable workload. Several factors could affect the caseloads. They are: (1) demographics--economic and age distribution within the total population; (2) changes in the law, requiring involvement in activities previously not done; (3) arrest and prosecution policies. These figures do not tell the whole story. Other factors may affect the nature and difficulty with the workload--for example, an increase in aggravated cases, prosecution policies about plea bargaining, the speed with which cases are handled. Thus, the raw statistical figures must be evaluated in light of these other factors.

TABLE E

Public Defender Caseload 1978-79 to 1982-83

	1978-79	1979-80	1980-81	1981-82	1982-83
Felony	5,329	5,346	5,450	5,963	5,769
Misdemeanor	12,855	9,654	10,431	11,762	9,593
Mental Health	2,601	1,470	1,387	1,054	3,080
Juvenile	2,040	2,895	2,418	2,598	2,626
	22,825	19,365	19,686	21,377	21,068

III. ADMINISTRATIVE UNIT AND PUBLIC DEFENDER AND CHIEF ATTORNEY'S OFFICE

Program Cost: $174,131

Program Goals:

1. To provide fiscal management for the office
2. To provide clerical and secretarial services for the office
3. To provide data collection and statistical analyses
4. To provide overall leadership consistent with office goals and objectives

The Administrative Unit is managed by Sharon Christensen, the Executive Assistant. The unit consists of six components:

1. Word Processing Center (2 legal stenos, 1 transcriber typist, 1 clerk steno)
2. Senior Legal Process Clerks (3 persons)
3. Legal Process Clerks (7 persons)
4. Accountant (1 person)
5. Reception Area Workers (2 telephone operators, 1 receptionist)
6. Statistics (1 paralegal)

Word Processing Center

The Word Processing Center is an operation of maximum efficiency. The 58 lawyers in the Hall of Justice are served by only four secretary-typists. The turn-around time for most documents is less than 24 hours. The reasons for this tremendous productivity are:

1. Outstanding personnel - Sandy Gordon, Penny Poblete-Santos, Anecia Leary, and Emily Ng are the busiest and the fastest and the most accurate legal workers in city government.
2. Technology - in 1976 the unit installed word processors with recording instruments that allows work to be dictated over the telephone at any hour and from any location. More recently, WANG word processors have replaced IBM--these new machines have improved memory and recall capacity.
3. Physical isolation - the typing unit is located on the first floor of the Hall of Justice and is separate from the distraction and the commotion of the main office.

MBO OBJECTIVES

1. To computerize fully data collection and statistical reporting

The Public Defender's Office has essentially two computer systems: (1) a shared system generated from court transactions to which the office can add its own information. The office has four terminals; (2) WANG word processors with sophisticated programming possibilities (5 workstations, 6th on order).

The Wang word processor stations are seriously under-utilized. They are primarily high-speed typewriters that allow easy correction and repetition of documents. We plan to use these workstations in the maintenance of statistical and

payroll information, as well as most other data and information which is kept by the office.

Ultimately, the office will totally integrate its Wang terminals into City Hall's computer banks. This will eliminate wasteful duplication or generation of separate documents as is necessary now.

Court-Management System

The Public Defender's Office has the use of a shared computer system with other agencies of the criminal justice system (the Court Management System). There are four terminals in the Public Defender's Office which are connected to the central court computer. This allows the retrieval of information about cases, clients, attorneys, and charges. The shared system also provides management and statistical information.

All records of client activities are maintained in the computer system. Dependence on manual client records ended in 1982-1983. In addition to retrieval of information, information about attorney assignments can also be fed into the computer. The staff was freed of the laborious and time-consuming task of maintaining anachronistic card records.

For all of its benefits, CMS is also an expensive and cumbersome system. It was designed almost entirely for case tracking thirteen years ago. In terms of computer technology,

thirteen years ago was the paleolithic period. In the judgment of experts, the present computer system is one that cannot be modified for new procedures and new work requirements.

Statistical information is very difficult to extract from the system. Requests for information must be carefully programmed, or the data retrieved will be unreliable. Untrained, or newly-trained, personnel who attempts to enter data into the system are confused by its complicated terminology. Basic information which has been taken off the computer and stored is hard to recall--often it takes several days to do so, sometimes it is impossible to recall the information.

However, there are now plans to write a new software program and this can relieve many of the problems. Hopefully, a new software program will have these features:

1. less complicated terminology and codes so that accuracy can be increased;
2. increased capacity to program statistical requests directly from the terminals;
3. increased capacity to cross-reference information (e.g., inquiry could be made of all cases under a particular attorney's name);
4. increased access to information which is stored as "off-line".

With the modernization of CMS, our client information will be improved. This should lead to an increased ease in obtaining information about the courts and about the productivity and output and quality of work. As a result, management will be more effective.

WANG

The second computer component in our office is the WANG word-processing system. There are five word processing stations. These stations are primarily high-speed typewriters which allow easy correction and duplication of documents. The office is planning to increase the usefulness of these computers by storing statistical and payroll information in them.

Since City Hall's payroll and budget is also on a Wang system, we have the ability to enter and receive this information directly by linking up with the City's system. This had done away with duplication of separate documents and unnecessary physical handling of documents. Previously, the first drafts of the annual budget were delivered physically from City Hall. The office had to correct, add, and subtract data from those documents. A finished copy was then typed up. The copy was then returned to City Hall, and it could later come back to us in another form to begin the process all over again.

By connecting our Wang system to City Hall, corrections are merely made on the screen and printouts can be made

interchangeably at either site. The time and labor saving will be substantial. If, for example, we want to check City Hall payroll figures, we can retrieve this data instantly in our own office.

Integration of CMS and Wang

Beyond the modernization of CMS and the expanded use of Wang, we envision the integration of both systems. This will permit an interchange of data from both systems. Separate caseload and performance information does not have to exist in two separate systems for one office.

A Wang program could be written which could automatically take data off CMS and update CMS's record. This would allow benefits such as the keeping of current attorney's monthly caseload. The activities of the trial courts could be readily reviewable by supervisors. Such types of "fifth dimensional" computer are readily available and would improve overall services in the office.

Recommendation: That the City and County authorize and appropriate monies for the development of a new software program for the Hall of Justice agencies. This program will include the following features: (1) improved availability of management information; (2) integration of Wang and CMS functions; and (3) greater access to "off-line" data.

2. To reduce conflict costs by 15%

The Public Defender is required by law to represent all people who have been accused of crimes. The exception is where a conflict-of-interest exists in the representation of someone. This usually occurs when there are two co-defendants in a case; the office can represent only one of these persons. Other examples are where the Public Defender is a witness for or against the person accused. In these situations, the court appoints a private attorney to represent the person accused.

Conflict-of-interest costs have become a major expenditure. In FY 82-83 the Municipal and Superior Courts paid out $1,416,022 to private attorneys representing conflict cases. This was 23% more than the conflict costs in FY 81-82 (which were $1,100,000). This occurred despite the fact that the total number of conflict cases did not change. To a great extent, the rise in conflict costs is attributable to an increased fee schedule.

The Public Defender has taken realistic measures to keep conflict costs down. We have given the courts a set of guidelines which would assist them in deciding whether this office should represent a particular client. Each lawyer must justify, in writing, to the Chief Attorney, why a conflict of interest has been declared. In cases where only an academic or theoretical conflict exists, the Public Defender will continue to represent the client. In close cases, the attorney is

required to have a supervisor's approval before declaring a conflict.

One of the problems in reviewing conflict practices is that accurate information is not readily available. For example, the Superior Court does not maintain a numerical count of conflict costs, despite the fact that the court pays out $810,000 per year to conflict attorneys. Nor is the information kept current. We, therefore, have had to gather this data from a number of different sources.

TABLE F

Number of Conflicts

a.

Year	Municipal Court Cases	Superior Court Cases	Total
79-80	1,576	x x x	
80-81	2,274	x x x	
81-82	1,962	x x x	
82-83	2,096	1,151	

b. Referrals to San Francisco Bar

	Felonies n	Misdemeanors n	Total
80-81	809	400	1,209
81-82	856	421	1,277
82-83	826	476	1,302 + 2%

(Source: S. F. Bar)

Conflict Costs

(a) Municipal and Superior Courts Total Costs

80-81	$1,113,310
81-82	1,117,712
82-83	1,416,022

(Source: Municipal and Superior Courts)

(b) Municipal Court Costs

Year	Costs	No. of Cases
77-78	$200,517	x x x
78-79	238,744	x x x
79-80	267,338	1,576
80-81	436,310	2,274
81-82	432,712	1,962
82-83	605,822	2,096

(c) Superior Court Costs

Year	Costs	No. of Cases
80-81	$677,000	x x x
81-82	685,000	x x x
82-83	810,000	1,151

Recommendation: Conflict costs are becoming a major expenditure for the City and County. It is time that the Mayor and the Board of Supervisors consider serious alternatives. We believe that one realistic experiment would be a pilot program where the City would pay, at salaries comparable to those

Deputy Public Defenders, two attorneys to handle a portion of the conflict cases. These caseloads would, in no case, exceed American Bar Association standards of 120 felonies or 400 misdemeanors per year.

With fees presently being stabilized, we believe that conflict costs can be held to their present level or reduced.

3. To reduce telephone bills

This objective is difficult to achieve. The telephone costs in FY 82-83 were roughly $54,000. This year it will be the same or more; however, our entire telephone budget for the year is only $30,000. The City is giving the office an allowance for telephones that is unrealistic and which does not take account of a department of 110 employees who must phone all over the country in a variety of serious cases. Because the allowance has been artificially frozen by the City, through an absurd budget formula, the telephone allowance has not matched the increases in telephone charges.

Nevertheless, the department is struggling to lower the telephone costs whenever possible. We have increased accountability by making outgoing calls possible only on each individual's personal line. This prevents persons from using centrex lines to make unaccountable long distance calls. Whether this measure, or any other, reduces telephone costs remains to be seen.

One partial solution to the problem is to have a WATS line and/or an intercept system which requires identification numbers before a long distance call is put through. We have proposed such solutions ad nauseam to the City and have gotten nowhere. The City has failed to find any real solution.

Recommendation: That the City, without delay, select a telephone program that would reduce long distance costs.

4. To provide training and require training of attorneys

Public Defender work requires training of the novice and re-training of the experienced. Training is geared towards (1) the development and the refinement of courtroom skills, and (2) the knowledge of the continuing changes in the law. No attorney can afford to pass up professional development. It is for that reason that an objective for the past year was for attorneys to obtain at least 20-hours' training per year. That objective was met.

Training is available at almost no cost through the California Public Defenders Association (CPDA). CPDA has training sessions which are conducted on a monthly basis. The funding is provided by the State of California under A.B. 985.

Not only should the attorney be required to go to training sessions, but the office has a duty to put such sessions on for the lawyers. Last year we provided sessions on new legislations

and on Proposition 8. More must be done and the emphasis should be shifted to courtroom skills.

Finally, it is essential that as many eligible attorneys as possible become certified criminal law specialists. This requires in-depth experience, extensive trial work, and continued legal education. In the Fall of 1984 an examination will be given. We expect that 20 lawyers from our office will apply, take the examination, pass it, and become certified as specialists.

IV. FELONY UNIT

Program Cost: $1,871,885[11/]

Program Goals:

1. To provide effective legal counsel in felony cases in the Municipal and Superior Courts
2. To decrease the number of state prison commitments and time served in state prison
3. To find alternatives to incarceration in as many felony cases
4. To limit as much as possible the number of felony holdings

The Felony Unit consists of 34 attorneys and two court alternative specialists. The unit handles over 5,700 felony cases in the Municipal and Superior Courts. The unit is supervised by two Head Trial Attorneys--Robert Berman and James F. Pagano.

11/Not included is $18,000 in grant money allocated for the hiring.

The work of the attorneys in this unit begins in the Municipal Court where a felony defendant is arraigned on a charge. The court makes a determination whether the individual defendant can afford his/her own attorney; and if he/she cannot, the Public Defender is appointed. The Public Defender will then make appropriate bail/OR motions and set a date for a preliminary hearing. At the preliminary hearing, the prosecution will attempt to show that there is enough evidence to hold the defendant to answer in a trial court to be held later in the Superior Court.

At the preliminary hearing, the defendant has the right to cross-examine the prosecution witnesses or to call his/her own witnesses (although this is not usually done). If the judge is satisfied that there is enough evidence ("reasonable and probable cause"), the defendant can be "bound over", that is, ordered to stand trial in the Superior Court. The case is then transferred to that court.

In the Superior Court the defendant is arraigned on the charges, and trial and pretrial dates are set.

Since 1982, the Felony Unit has adopted a system called "vertical representation". This means that the same lawyer represents the client throughout the proceedings in both the Municipal and the Superior Courts. Although this system is somewhat less flexible than a system which allows different

attorneys at various stages of the case (commonly referred to as "horizontal representation"), the client is better represented.

Vertical representation makes a single lawyer accountable for the entire case. The client does not feel he is shifted back and forth between lawyers. Vertical representation forces the attorney to make appropriate decisions about the case at all times. The attorneys cannot "pass the buck" to next attorney handling down the line as in horizontal representation. Thus, if there is an advantage in waiving a preliminary hearing and entering an early plea, the attorney must advise the client as to the appropriate course of action.

TABLE G

Felony Work in Municipal and Superior Courts

Public Defender Cases

1. Number of Felonies

Municipal Court Felonies	5,175
Superior Court Felonies	2,096

2. Disposition of Municipal Court Felonies

Arraigned	5,175
Dismissed (1385 P.C.)	981
Diverted	210
Other Counsel	390
Incompetent (1368/1370)	17
Pleas to Misdemeanor	649
Held-to-Answer	815
Certified Pleas	533
Reduced to Misdemeanor	313

3. Activity and Disposition of Superior Court Cases

a. Case Activity

Arraignment	1,115
Motions to Revoke	459
Certification from Muni Court	522
Sentences	1,753

b. Case Disposition

State Prison	479
Probation	1,079
Dismissals	193
Other	181

c. Trial Activity

Guilty Verdict	109
Acquittals	23
Hung Juries	11

Table G sets forth the work of the Felony Unit statistically. In the next pages, we will discuss this work as it relates to the program objectives for the Felony Unit. A breakdown of the cases by type; e.g., burglary, murder, assault, etc., is set forth in Appendix A.

MBO OBJECTIVES

1. To provide representation in 5,300 new cases

The Felony Unit anticipated handling as many as 5,300 cases. However, the number of cases was virtually the same as last year; i.e., 5,175 in FY 82-83 vs. 5,100 in FY 81-82. There was a large increase in filings in the first two quarters of the year by the District Attorney (4,801 for all cases). However, this was followed by a noticeable reduction during the last two quarters (3,027). Since 1979, the average annual number of felony filings has fluctuated very little (see Table H). Everything indicates that caseloads are virtually constant, and the workload should remain the same for the next few years.

TABLE H

Felony Work in San Francisco Courts 1978-1983

(All Cases--Public Defender and Non-Public Defender)

Cases Set for Preliminary Hearing	
1-06-78	2,524
7-12-78	2,614
1-06-79	2,810
7-12-79	3,713
1-06-80	3,466
7-12-80	3,568
1-06-81	3,816
1-06-82	3,670
7-12-82	4,801
1-06-83	3,027

(Source: Court Management System)

2. To limit the number of certified pleas in the Municipal Court to 500

Felony pleas of guilty are often entered in the Municipal Court. These pleas can be entered shortly after arraignment, before a preliminary hearing, or immediately after the preliminary hearing takes place. Such pleas are then certified by the Municipal Court judge to the Superior Court for sentencing. In previous years, very few cases made their way to the Superior Court in this manner. However, in 1981-82 there was a huge jump in certified pleas (see Table I)

TABLE I

Certified Pleas (All Cases)

1978-79	314
1979-80	396
1981-82	462
1982-83	1,649

(Source: 1980 to 1983 Judicial Council Reports)

The passage of Proposition 8, the so-called Victims Bills of Rights, in June, 1982 brought about widespread pleas of guilty in Municipal Court. Proposition 8 restricted plea bargaining in the Superior Court in "serious felony cases"--that is, in cases involving 26 designated felonies. It also provided for enhanced penalties for defendants having prior convictions for such "serious felonies." Proposition 8 did not, however, restrict plea bargaining of these "serious

felonies" in the Municipal Court. The result was that defendants who wished to settle their cases had to do so in the Municipal Court.

The difficulty with certified pleas was stated in last year's Annual Report: "Felony pleas in the Municipal Court are usually conducted at an early stage in the life of the case, usually before a solid lawyer-client relationship has developed and inevitably before an exhaustive investigation of the case has been conducted. Both the clients' sense of justice and the quality of the representation are bound to suffer." (At p. 23.)

The office made a gargantuan effort to reduce certified pleas. There were several reasons for this:

1. Over 55% of certified pleas were occurring in non-Proposition 8 or "serious felony" cases. Thus, much of the rationale for an early plea was unjustified;
2. Plea bargaining, although technically restricted, was being conducted by the court and by the District Attorney in non-Proposition 8 cases in the Superior Court;
3. Although the number of state prison sentences seemed to be dropping, the number of dismissals in the Superior Court had also been cut to half of those in the previous year;

4. Certified pleas made it too easy for the District Attorney to handle a caseload and could cause the District Attorney to easily file more cases which would not normally be filed.

Thus, strict guidelines were established with respect to the authority of an attorney to participate in a certified plea. In cases where a state prison sentence of five or more years was had, a supervisor's approval was required. The pressure to reduce certified pleas has paid-off in part. Listed below are the monthly percentages of cases sentenced as a result of a plea in Municipal Court:

July -- 31

Aug. -- 39.3

Sept. - 45

Oct. -- 40

Nov. -- 40

Dec. -- 41.8

Jan. -- 38

Feb. -- 34

Mar. -- 27

Apr. -- 30

May --- 33.5

June -- 27.3

This pressure has intensified in recent months. As desirable as early dispositions may seem, the potential for mistake, for malpractice, is very great when one makes a decision too early in a case. The lawyer has had too little time to fully investigate all possible defenses of fact and law. Consequently, the attorney is not in the strongest position to assess the case in terms of its trial strength or in terms of disposition.

There is also an important public policy question. A defendant should have some sort of "day in court", especially in important felony cases which carry heavy sentences.

3. To limit the number of cases held-to-answer to 25% of the total number of cases set for preliminary hearing

The Public Defender's Office felony work must be to prevent as many cases as possible from cases reaching the Superior Court. An important indicator of performance is the dismissal of felony cases in the Municipal or the reduction of those cases to misdemeanors.

In 1982-83 a slightly larger percentage of felony cases reached the Superior Court than in the previous year: 45% in FY 82-83; 42% in FY 81-82.

4. To represent 2,200 cases in the Superior Court

In FY 82-83 the office handled a total of 2,096 cases. Table J indicates the Public Defender caseload of the Superior Court since FY 78-79.

TABLE J

Superior Court Caseload

1. Public Defender Caseload - Sentences

1978-79	2,202
1980-81	1,960
1981-82	2,040
1982-83	2,096

2. Superior Court Caseload - Sentences

1978-79	2,924
1980-81	3,015
1981-82	3,169
1982-83	3,576

The Public Defender's Office is prepared to increase its caseload to 2,200 by taking on cases that might otherwise have been assigned to private counsel as conflict cases. We also expect this caseload to be more difficult. With the decrease in certified pleas, it will represent cases waiting trial, rather than cases which have been settled and awaiting sentence.

5. To decrease the number of state prison sentences to 400

In FY 82-83, the number of state prison commitments on cases represented by the Public Defender declined 11%, from 538 commitments in 1981-82 to 479. This occurred despite the passage of Proposition 8's increase of prison terms.

This Public Defender data paralleled those of Department of Corrections' statistics (see Table K). The Department of Corrections has noted a decline both in 1982 and in 1983.

The reduction in state prison sentences is especially gratifying. It reverses a two-year trend for prison commitments. And it comes after a concerted effort by the supervisory staff of the Public Defender to seek and to obtain alternatives to state prison.

TABLE K

State Prison Sentences

1. Public Defender Cases

FY 78-79	402
FY 79-80	390
FY 80-81	397
FY 81-82	538
FY 82-83	479

(Source: CMS)

2. New Felons Committed to State Prison

1978	555
1979	531
1980	593
1981	816
1982	727

(Source: Department of Corrections)

6. To decrease the length of base terms in state prisons 10% (measured in months)

Not only are we determined to reduce the number of commitments to state prison, we also need to reduce the length of the state prison sentences. Last year the average base-term[12/] sentence was 30.9 months. On the basis of partially-complete information, we believe that this was actually less than the average term in FY 81-82. Our target is to reduce that average base term to 27.8 months.

7. To increase the number of Superior Court trials to 140

In FY 82-83 our objective was to increase felony jury trials 10% over FY 81-82. This objective was met. Felony jury trials rose from 109 (FY 81-82) to 131 (FY 82-83). This year our goal is 140.

To the casual observer, the question might be: Why increase jury trials? However, experience tells us that the health of a Public Defender's Office can, in the no small part, be measured by the willingness of attorneys to take cases to trial. Plea bargaining, unfortunately, is far too prevalent. An office that exclusively plea bargains will lose all perspective about the value of cases, and it will soon lose all trial expertise on the part of its lawyers.

12/The base term is the sentence of a defendant without consecutive sentences. For technical reasons, the computer is not programmed to indicate a consecutive or cumulative sentence.

Plea bargaining often occurs for the wrong reasons. Some attorneys bargain because they do not want to trouble themselves preparing a defense. Others plea bargain because they are afraid to face a jury.

Jury trials keep the criminal justice system honest. Police and prosecutors are less likely to present faulty cases if there is a possibility that a greater amount of cases will be tried. On the other hand, if defense attorneys are willing to plea bargain weak or unsubstantiable cases, prosecutors will file more such cases, with innocent people being charged and convicted.

8. To increase the number of alternative sentencing proposals to 150

The sentencing hearing has been the most under-utilized process in the San Francisco criminal justice system. Plea bargaining has meant, in the vast majority of felony and misdemeanor cases, that precise-sentencing agreements are reached at the time the defendant enters a plea of guilty. Only minor details have been left for a judge to decide.

In the last year we began a program to strengthen advocacy at sentencing hearings. This involved the presentation of a detailed plan which gave judges options other than state prison or long-term county jail sentences. We employed two first-rate alternative sentencing workers, Barbara Fain and Elizabeth Bowers, to assist attorneys in the development of suitable plans and analyses of the client.

The program has been successful. Forty-two people have gotten alternative sentences other than state prison sentences. In addition, the program offered 59 other individuals assistance in obtaining some type of mitigation of their sentences.

V. MISDEMEANOR UNIT

Program Cost: $884,093

Program Goals:

1. To provide effective legal counsel in misdemeanor cases in the Municipal Court
2. To increase the number of dismissals of misdemeanor cases
3. To increase the number and success of misdemeanor trials

The Misdemeanor Unit consists of 19 lawyers, including a Head Trial Attorney, Daro Inouye, who supervises the unit. The unit handles a tremendous volume of cases--nearly 10,000. The misdemeanor cases carry a maximum sentence of six months, or a year, in jail and a fine of $500 or $1,000, depending on the charge. The cases vary greatly, but the great bulk of prosecutions are for drunk driving, petty theft, prostitution, and simple assaults (see Appendix B).

Table L indicates the work of the Misdemeanor Unit. Table M presents a comparison by fiscal year.

TABLE L

Disposition of Public Defender Cases - Misdemeanor Unit

1.	New Cases	
	Arraigned	8,375
	Convicted	3,794
	Dismissed per 1385 PC	2,494
	Dismissed per 1378 PC	26
	Diverted per 1001 PC	1,483
	Other Counsel	251
2.	Motions to Revoke (MTR)	1,218
3.	Trials	
	Guilty on all counts	29
	Guilty on one or more counts	11
	Acquitted	40
	Hung	12
		92

TABLE M

Fiscal Year Comparisons - Misdemeanor Unit

	New Cases	Convictions	Dismissals	Diversions	MTR
82-83	8,375	3,794	2,522	1,483	1,218
81-82	9,826	3,471	2,473	2,137	1,936
80-81	8,622	4,631	3,404	1,198	1,809
79-80	8,395	3,560	3,433	577	1,730
78-79	12,136	Not av.	Not av.	Not av.	Not av.

In Fiscal Year 82-83 the number of jury trials in the misdemeanor courts increased slightly to 92 trials from the 82 trials had in FY 81-82. However, these jury trial patterns compare unfavorably with FY 80-81 when the office had 132 jury trials. In addition, according to our own MBO figures in the first quarter of FY 83-84, there were only 15 jury trials. This is not acceptable.

The fact that fewer misdemeanor cases are entering the Municipal Court is no excuse for lack of jury trials. In other jurisdictions with smaller caseloads, as many as 200 misdemeanor cases a year are tried. We know that jury trials demonstrate a willingness by the Public Defenders to fight for their clients. It is the only way that a Public Defender can demonstrate credibility as a defense attorney. It is the only way a Public Defender can demonstrate that he/she is not a paid whore of the system.

Deputy Public Defenders have been told in blunt terms that their future in the office is dependent upon their having had substantial jury trial experience.

Table N presents a breakdown of jury trial data by fiscal year.

MBO OBJECTIVES

1. To represent at least 8,500 new misdemeanor cases and over 1,500 motions to revoke

As Table N indicates, there was a substantial drop in the number of cases represented by this office. This drop occurred despite a fairly-stable arrest rate in the city.[13/] The decrease is attributable to a more discriminating policy of filing by the District Attorney. On the basis of statistical reports for the first quarter of 1983-84, this trend will not only continue but probably accelerate. We expect the number of new misdemeanor cases to drop to around 6,000, and the number of motions to revoke will be around 900.

TABLE N

Public Defender - Misdemeanor Jury Trials
FY 78-79 - 82-83

	N	Convicted	Acquitted	Hung, Mistrial
78-79	87	Not av.	Not av.	Not av.
79-80	85	37	30	18
80-81	135	58	38	39
81-82	78	38	26	14
82-83	92	42	40	12

13/According to the Sheriff, there were 42,821 persons booked at city prison during FY 82-83 as opposed to 42,496 in FY 81-82.

2. <u>To achieve dismissals in 60% of all misdemeanor cases</u>

The dismissal rate (resulting from dismissal and diversion dismissal) in the Municipal Court was 42% of all cases which entered the misdemeanor courts during FY 82-83. This compared with a dismissal rate in FY 81-82 of 46%. The small decrease is probably due to a more stringent review by the District Attorney in the charging process whereby weaker cases are not filed.

Although we seek to increase the dismissal rate, that objective will be difficult to achieve. The District Attorney's more stringent standards will cause "weaker cases"--cases which are more likely to be dismissed--to be "weeded out" and discharged.

3. <u>To staff the misdemeanor courts with experienced attorneys</u>

The misdemeanor courts have, in years past, been the place to start new attorneys. It was felt that there, their inexperience could do little damage. More experienced attorneys were assigned to the complex and serious felony cases.

The difficulty with this thinking is that those charged with misdemeanors are also entitled, as a matter of law, to effective representation. Misdemeanor defendants face jail terms and face the stigma of a criminal conviction just as felony defendants do. As criminal defendants caught up in the system, misdemeanor clients face the same fears, anxieties, and life disruptions as felony clients do.

A person, for example, who is charged with petty theft can lose not only his/her employment but also face serious licensing difficulties. Aliens who have misdemeanor convictions can be deported. Because of the high stakes involved in these cases, we have rotated experienced attorneys into misdemeanor works where they can assist less experienced attorneys improve the overall quality of representation.

Recently, there has been a smaller turnover of attorneys within the office than in past years. As a result, there are more experienced attorneys available to be sent to misdemeanor work rotations.

VI. JUVENILE UNIT

Program Cost: $494,321

Program Goals:

1. To represent juveniles in delinquency cases and in cases where the District Attorney seeks to exclude juveniles from the juvenile justice system
2. To represent adults whose parental rights are being suspended or terminated

The Public Defender's Office represents juvenile clients in the Juvenile Court at the Youth Guidance Center. The juvenile court unit of the office has a staff of seven attorneys, one investigator, two social workers, and three secretaries. The unit is supervised by a Head Trial Attorney, Joseph L. Spaeth.

Most of the Public Defender juvenile clients are charged with having committed offenses which, if the juveniles were adults, would be crimes. In these proceedings the District Attorney files a petition pursuant to Section 602 of the Welfare and Institutions Code. The case is later heard before a referee or before a Superior Court judge.

The Public Defender also represents other juveniles who are alleged to have behavior problems. These juveniles are not charged with committing any acts which would be criminal in adult courts. Typically, these are children who are charged with truancy, with curfew violations, or with being beyond parental control. These are called "status" offenders. Petitions pursuant to Section 601 of the Welfare and Institutions Code are filed in these cases. If these petitions are granted, the child is taken from the control of his or her parents.

In certain criminal-type cases, the District Attorney will attempt to exclude a juvenile from the juvenile court process and to have the juvenile prosecuted as an adult in an adult criminal court (pursuant to Section 707, et seq., Welfare and Institutions Code). If that action is taken, the juvenile is entitled to a hearing on whether or not it is proper to have the juvenile tried as an adult.

The Public Defender also represents parents in Juvenile Court where the Department of Social Services is attempting to suspend or to terminate the parents' custody over their children.

The Public Defender is a forceful and a zealous advocate for the protection of the rights of the juvenile. Juvenile cases are adversary proceedings, and the attorney must use all of his talents in presenting the factual and the legal defenses on behalf of the juvenile client. At the same time, the Public Defender must also be sensitive to the special problems confronting a juvenile offender. Attorneys in the juvenile courts must be able to identify emotional and educational difficulties and to explore the alternatives which exist outside of the legal system. The lawyers must utilize fully all of the community-based agencies which provide social or psychiatric assistance.

TABLE O

Juvenile Unit Work 1982-83

Section 601 W&I	89
Section 602 W&I	2,217
Section 707 W&I	8
Section 300 W&I	320
Total	2,634

Fiscal Year Comparisons

1. Caseloads

	78-79	79-80	80-81	81-82	82-83
601	127	141	145	139	89
602	2,119	1,410	2,118	2,470	2,217
707	NA	19	15	12	8
300	225	325	197	202	320
Total	2,471	1,895	2,475	2,823	2,634

2. Commitments to CYA

78-79	96
79-80	81
80-81	89
81-82	90
82-83	65

3. Commitments to Log Cabin

79-80	136
80-81	95
81-82	102
82-83	103

MBO OBJECTIVES

1. To represent juveniles in at least 2,200 cases petitioned under Sections 601, 602, and 707 W&I Code and 300 adults in Section 300 W&I Code proceedings

Our statistical findings parallel those of the Department of Justice and the Judicial Council (see Table P):

TABLE P

Juvenile Court Caseloads and Filing (All Cases)

1. Department of Justice: Active Juvenile Probation Caseload 1972-81

1972 - 1,997	1977 - 1,144
1973 - 1,956	1978 - 1,119
1974 - 2,004	1980 - 1,333
1975 - 1,940	1981 - 1,313
1976 - 1,837	

2. Judicial Council Reports: Juvenile Court Filing

	76-77	77-78	78-79	79-80	80-81	81-82
Total Filings	2,355	2,017	2,130	2,116	1,933	2,295
Original Filings	1,597	1,484	1,467	1,426	1,178	1,388
Subsequent Filings	758	533	653	690	755	907
Contested Matters	480	437	516	621	556	530
601 W&I	209	172	93	132	119	87
602 W&I	2,098	1,815	2,026	1,979	1,456	1,301

According to Tables O and P, the caseload at Juvenile Court has not changed dramatically since FY 78-79. The most remarkable feature of these statistics is the decline of 601 W&I cases and the increase of 300 W&I cases--patterns which are likely to stay in effect.

It is our opinion that petitions against adults regarding termination of parental rights will remain high for the foreseeable future. There are two factors influencing this increase of workload:

1. S.B. 14 (effective January 1) which mandates hearings on a six-month basis;
2. The increase of staff by the Department of Social Services (D.S.S) and the City Attorney to bring these petitions against allegedly inadequate parents. The City Attorney has three (3) attorneys assigned full time to this work, in addition to a full-time supervisor. The City Attorney also has the use of five (5) D.S.S. court officers to investigate and to prepare these cases. Arranged against this are two deputy public defenders.

2. <u>To utilize social work in at least 225 delinquency cases</u>

The Juvenile Unit employs two full-time social workers. They interview clients, render evaluation, and provide dispositional plans. They do this work in 601, 602, and 707

W&I cases. Their work has been successful in reducing log cabin and CYA commitments and in persuading the court not to exclude the juvenile from the juvenile system.

The Public Defender social workers have an important advantage: the information is conveyed within the setting and the protection of the lawyer-client relationship. Thus, the client and the client's relatives are more likely to speak candidly about their problems. Accordingly, the social worker is better able to make an accurate diagnosis and an appropriate plan for treatment or assistance.

Last year we utilized social work staff in a total of 302 cases. We thereby exceeded our MBO objective, and we have adjusted our target upward to 350.

3. To involve community-based agency participation in at least 350 cases

There exists a rich network of community-based agencies, many existing on private funding, others on public and quasi-public funding. They have trained counselors and instructors and they serve specialized clientele; i.e., Hispanic youth in the Mission by "Real Alternatives." Currently, the office makes good use of these programs; the office will continue to increase its involvement with these groups.

The use of these agencies is a healthy alternative to incarceration in juvenile hall, log cabin, or CYA. These agencies provide guidance in educational, emotional, and

behavioral problems for young people; whereas custody hardens young people, isolates from the mainstream, and tends to criminalize them.

This year the Juvenile Court utilized community-based agencies in 446 cases, greatly exceeding the MBO target of 350.

4. To limit the number of 707 W&I certifications to 10

The exclusion of the juvenile offender from the juvenile justice system is a drastic step. It means that the youth is punishable in the same way that an adult is and can suffer the state prison sentences for lengthy terms.

A youth charged with certain crimes, like murder, robbery, rape, will be presumed to be unfit for the juvenile justice system. These crimes are listed in Section 707b. Youth who are charged with all other offenses, not set forth in Section 707b, are not presumed; and the burden is on the prosecutor to establish unfitness.

The Public Defender has made every effort to keep youth charged with crimes, even serious crimes, within the juvenile justice system.

We feel that rarely, if ever, are youthful offenders "helped" by adult punishment or deterred from further criminality. The youth is merely hardened or criminalized further by exposure to the world of the adult offender. We feel, too, that adult treatment is never really carried out--the

juvenile remains largely isolated from adults and held in separate facilities, whether in the county jail or state prison. And there is a final irony: most of those excluded from the juvenile court end up going to the California Youth Authority after being tried and sentenced as an adult.

Fortunately, we held the total number of 707 W&I exclusions in FY 82-83 down to just eight cases.

VII. MENTAL HEALTH UNIT

Program Cost: $327,881

Program Goals:

1. To represent persons for whom a mental health conservatorship is sought
2. To represent persons involuntarily detained beyond 72 hours in a psychiatric facility at certification review hearings and on writs of habeas corpus
3. To represent persons subject to post-certification proceedings for dangerousness to self or others
4. To represent the developmentally disabled in commitment proceedings
5. To represent the insane and those adjudged to be mentally disordered sex offenders in post-commitment proceedings

The Public Defender is the principal attorney in the community for the mentally disordered and the developmentally disabled. The Mental Health Unit of the Public Defender

consists of five attorneys, including the Supervisor, Head Trial Attorney Estella Dooley. Mrs. Dooley is a nationally-recognized expert on mental health law. The unit has the assistance of two mental health investigators and a legal stenographer.

MBO OBJECTIVES

1. To represent persons for whom a mental health conservatorship is sought

Much of the work of the Mental Health Unit is done in the defense of petitions to establish mental health conservatorships and in subsequent related proceedings. The conservatorship petition is the legal procedure for establishing judicial control over a person who is alleged to be gravely disabled in that, as a result of mental disorder, the person is unable to provide for his/her basic personal needs for food, clothing, or shelter. If the petition is granted, a person may be placed in a state hospital, in a locked facility anywhere within the state, or in a local facility, whichever the court deems appropriate.

In these cases the Public Defender is appointed as attorney for the proposed conservatee. As such, the Public Defender must interview the proposed conservatee at his/her place of confinement, review medical reports, interview witnesses, and explore alternative placements. The proposed conservatee has the right to a hearing and to a court or jury trial on the issue of grave disability. If conservatorship is established, the

conservatee has a right to a rehearing at any time, and thereafter at six-month intervals. Conservatorship expires at the end of one year, unless a petition for renewal is filed. The Public Defender represents the conservatee in rehearings and renewals, as well as in other proceedings authorized by statute, including requests for consent to perform medical treatment, requests for consent to perform electro-convulsive therapy, and requests for change of placement. Table Q shows that the number of mental health conservatorship petitions rose sharply last year.

TABLE Q

Conservatorship Petitions (Public Defender Cases)

	79-80	80-81	81-82	82-83
Conservatorship Petitions (New)	577	509	535	808
Conservatorship Petitions (Renewals)	560	436	425	479

2. To represent persons involuntarily detained beyond 72 hours in a psychiatric facility at certification review hearings and on writs of habeas corpus

In 1982 the Legislature enacted A.B. 3454. This legislation requires a hearing for persons involuntarily hospitalized after a 72-hour period. The hearing must take place within seven days of the initial commitment at the hospital where the patient is

detained. The patient is entitled to notice of hearing which specifies the reasons for detention.

This legislation was the Legislature's response to Doe v. Gallinot (1979) 486 F.Supp. 983. The federal court required such hearings as a minimum due-process protection against unfounded mental health incarceration.

In meeting the need for counsel under A.B. 3454, the Public Defender is heavily taxed. An attorney and a mental health investigator must travel to and from six hospitals where mental health patients are detained. Hearings are scheduled in each hospital at least twice a week. Each client must be interviewed before a hearing.

During the first six months that A.B. 3454 was in effect, the office handled 1,304 cases.

In addition to a certification review hearing, any person certified beyond the 72-hour period for 14 days of intensive treatment is entitled to judicial review in the Superior Court by writ of habeas corpus. The Public Defender is required, by Standing Order of the Superior Court, to advise all such persons of that right and to represent them at the writ hearing. This year the Public Defender so advised 2,331 clients and, on behalf of those clients, requested 306 writs.

3. To represent persons subject to post-certification proceedings for dangerousness to self or others

The Public Defender represents persons certified for an additional 14-day period of intensive treatment on the basis

that they present, as a result of mental disorder, an imminent threat of taking their own life. Such persons are entitled to a hearing by writ of habeas corpus to secure their release. The Public Defender also represents persons alleged to present, as a result of mental disorder, a demonstrated danger of substantial physical harm to others. Such persons are subject to a 180-day period of confinement and are entitled to a hearing or jury trial.

4. To represent the developmentally disabled in commitment proceedings

Developmentally-disabled persons alleged to present a danger to themselves or to others are subject to a one-year commitment to a state hospital. The Public Defender represents such persons in the initial proceedings, at placement hearings, and when renewal of commitment is sought. Such representation requires close and continuing examination of least restrictive placement alternatives.

5. To represent the insane and those adjudged to be mentally disordered sex offenders in post-commitment proceedings

Finally, the Mental Health Unit provides representation for returnees from state hospitals in not-guilty-by-reason-of-insanity commitments and commitment under the mentally disordered sex offender[14/] statute. The attorneys litigate

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14/The mentally disordered sex offender law in California, Section 6100, et seq., W&I, was repealed in 1982. However, those committed under it are still subject to its provisions.

various issues affecting the continued commitment and type of commitment of these clients. The types of cases range from hearings for granting or revoking out-patient parole status to jury trials for release from commitment or extension of the maximum term of commitment. This year 47 such cases were handled.

VIII. RESEARCH UNIT

Program Cost: $109,203

Program Goals:

1. To prepare writs and appeals and legal memoranda
2. To provide research for cases in litigation
3. To provide technical assistance in the solution of complex legal problems
4. To provide educational materials for the office

The Research Unit is supervised by a Head Trial Attorney, Grace L. Suarez, who is assisted by one attorney and by a paralegal.

The Research Unit is the most important recent addition to the office. It provides a capability essential to a large law office, with a great volume of work. The Public Defender must be able to prepare well-reasoned and well-researched motions on behalf of the client. The Public Defender must also be able to pursue appellate writs during the course of a case in order to test unfavorable rulings. Finally, the Public Defender must

occasionally present appellate briefs in appeals of misdemeanor cases.

By having the research function specialized in a unit of the office, the trial attorney can devote undivided attention to the factual presentation of the case while the Research Unit prepares the written memoranda. This specialization allows for the tasks of research and writing in complex cases to be done by those attorneys who are most familiar with changes in the law.

The unit is equipped with a small library, an indexed brief bank, a micro-fiche file containing the cases of the State Public Defender. It has a LEXIS computer terminal, two WANG workstations, and an Apple computer.

MBO OBJECTIVES:

1. To produce writs, appeals, motions, and research memos for the clients of the Public Defender

   The output of the Research Unit was as follows:

183	motions (e.g., 995 P.C., 1538.5 P.C., etc.)
54	memos of law
17	appeals to the Superior Court Appellate Department
59	writs to Superior Court, Court of Appeal, and Supreme Court
196	miscellaneous items of research
509	

Two decisions briefed by the Research Unit were published this past year: Pompi v. Superior Court (1982) 139 Cal.App.3d 503 and Velasco v. Municipal Court (1983) _____ Cal.App.3d _____.

2. To provide training and educational materials

The unit provided training sessions on Proposition 8 and on newly-enacted legislation.

The unit also produced monthly newsletters with summaries of the latest cases.

3. To update the briefbank and replace older documents with newer ones

The unit added new briefs and replaced outdated documents. The unit has used its Apple computer to keep track of cases and provide a litigation support system.

IX. INVESTIGATION UNIT

Program Cost: $418,947

Program Goals:

1. To obtain information about the facts and circumstances regarding the cases of the individual clients represented by the Public Defender
2. To provide necessary support services to attorneys in furtherance of the representation of those cases

The Investigative Unit consists of a Head Trial Attorney, Gordon H. Armstrong, who supervises the unit; a principal investigator, Harry Guyton; 12 investigators; and one

paralegal. The unit carries out investigation for the Felony and for the Misdemeanor Unit.

An investigator starts working on a case when an attorney makes a written request. The request may ask that a witness be located and interviewed, that the crime scene be photographed, and/or that a document be located. A suspense date is set for the completion of the investigation. Supplementary requests may be made. The same investigator will be assigned to the case throughout the life of the case.

Solid and competent investigation is absolutely essential to effective representation. It can literally win the case for the lawyer. It can provide the exculpatory evidence which proves a client's innocence. It can find those facts which contradict the prosecutor's case.

Offices simply cannot afford to neglect adequate and professionalized defense services. As the 1976 Commission on Defense Services stated:

> "Criminal investigation is an essential element of criminal defense. Offices lacking adequate investigative staff tend to neglect the investigative function and rely on the state's version of witness statements and other evidence. It is not cost-effective for lawyers to do all of the investigation connected with a case. Moreover, where lawyers conduct investigations, it may be necessary to have an investigator along to refute charges of impropriety and to have a witness who can testify at trial if necessary.

> Secondly, since investigation is increasingly becoming a professional skill requiring professional expertise, investigators should be hired who have the professional skills required. Professional investigators greatly improve the overall quality of service in a defender office.
>
> In order to ensure that investigations are conducted in every case where there is a factual question not subject to objective determination, an adequate attorney-investigator ratio is necessary. At least one investigator should be employed for every three staff attorneys. This figure is based upon the experience of defenders from coast to coast." (At p. 333.)

In an office as large as the Public Defender, delays, mix-ups in paper work, and last-minute requests make it difficult for all requests to be completed within the time requested and that all subpoenas be served on time. Lawyers are not always easy to work with. Investigation vehicles from the small pool of cars are often in the shop and in short supply.

But thanks to the coordination of Gordon Armstrong and of Harry Guyton, with few exceptions, the work has been done promptly and effectively.

3. <u>To provide 32-hours' training per year per investigator</u>

Criminal investigators should be just as professional as attorneys. A good investigator must possess a working knowledge

of serology, criminalistics, medicine, law, and psychology. Investigation is a field where the body of knowledge in law and science is always developing new concepts.

1983-1984 will be an important year for the Investigative Unit. An examination will be given to choose permanent-status civil service investigators and a senior investigator. This examination will allow the office to have the benefit of a merit-selection process which insure that the best people available are chosen. The examination will also bring a spirit and a pride to those people who are chosen. It will give job protection and benefits to individuals who perform a critical function in the defense of accused poor people.

MBO OBJECTIVES

1. To investigate 1,400 cases

Last year the unit investigated a total of 1,797 cases.

TABLE R

Cases Investigated - Fiscal Year Comparisons

1978-79	1,903
1979-80	1,107
1980-81	1,583
1981-82	1,362
1982-83	1,797

2. <u>To cut response time to ten working days and to serve all subpoenas with 2.5 days of initial request</u>

Investigation must be commenced and finished without delay. The rapid response of Public Defender investigators can affect the outcome of most cases. Therefore, the investigator must involve themselves in continuing education and professional development. Last year we wanted the investigators would attend at least 32 hours each. However, they fell short, averaging instead 21.

The great difficulty here is that training funds do not exist locally or elsewhere. The investigator must find a program outside the office and pay for it as his or her own expense.

<u>Recommendation</u>: A major difficulty for investigators is the availability and the condition of cars. The office has seven cars--five of which are undependable. At any given time, one or more will be in the City's Central Shop. It is our suggestion that the City shift away from expenditure for cars and put money into individual mileage for investigators. This would increase productivity and hold costs.

X. OTHER MATTERS OF INTEREST

1. The Speedy Trial or Court Reform Initiative

During 1984 the California electorate will vote on a proposal known as the Speedy Trial Initiative.[15/] Presently, its proponents are circulating petitions for signature in order to qualify it for the ballot.

The Initiative will have a major impact on the criminal justice system. It would, among other things,

- -- eliminate the requirement of a unanimous jury in all but capital cases, allowing a 10-2 vote as sufficient for conviction;
- -- eliminate questioning by lawyers of potential jurors in almost every cases;
- -- allow hearsay evidence to be used before grand jurys and at preliminary hearings;
- -- eliminate the right of defendants to call witnesses at the preliminary hearings, unless the judge authorizes it;
- -- eliminate the requirement of a post-indictment preliminary hearing;
- -- makes it mandatory that courts hear and decide a motion to revoke probation before any trial of a defendant who was on probation at the time of the new arrest.

[15/] The Initiative (herein) is also referred to as the "Court Reform Initiative."

This Initiative is designed to make it easier to convict defendants in less time. However, it contains provisions that are not helpful to the efficient administration of justice and in some ways hinder sound prosecution of cases.

a. The Elimination Of Questioning By Attorneys Of Prospective Jurors Makes It More Difficult For Both Prosecution And Defense To Choose A Fair-Minded Jury.

The proponents of the Initiative argue that the selection of the jury can take great periods of time. They cite cases, such as the Hillside Strangler case in Los Angeles, where the selection of the jury went on for months. There are other cases, which they can and do point to, where the questioning of juries by attorneys is extended. Those cases usually involve defendants accused of crimes which have received a high amount of pretrial publicity. In these cases the attorneys seek to ascertain (1) the impact of pretrial publicity; (2) knowledge of possibly-inadmissible evidence by potential jurors; (3) the ability of the jurors to remain fair and impartial in the face of inflammatory and aggravated testimony.

Although such voir dire questioning, as we call it, has been lengthy in a very few cases, in most cases it is a sketchy and abbreviated procedure. Last year in San Francisco, the average Superior Court trial lasted four to five days. The typical voir dire in these cases lasted from a few hours to a day.

The California District Attorneys Association (CDAA) has consistently advocated the right of attorneys in criminal cases to question prospective jurors. In fact, CDAA filed an amicus curiae brief in the case of People v. Crowe (1973) 8 Cal.3d 815 which argued forcefully and persuasively that the attorneys, both prosecutor and defense attorney, and not the judge, should do the questioning. As Justice Mosk (formerly the Attorney General of California) characterized CDAA's opposition in his dissent:

> "Interrogation of prospective jurors is essential to the intelligent exercise of counsel's right to challenge. In the opinion of the district attorneys and court counsel, control over the manner in which proper questions are put, and the order in which questions are asked, often will suggest reasons not exposed by the court's interrogation for the exercise of challenges. Only the trial counsel has a grasp of the facts of the case sufficient to propound questions that might expose a subtle, previously undetected bias in the hidden recesses of a prospective juror's mind. A judge could not know these facts prior to trial of the case; indeed, if he does, he should be deemed disqualified." (Mosk dissenting at pp. 835-836.)

Justice Mosk went on to state the view of defense counsel, as it was put forth by the California Public Defenders Association in their amicus brief,

> "Eyeball-to-eyeball examination of a potential juror may lead counsel to believe the juror to be untruthful or evasive in his answers, or possibly to entertain some unexpressed hostility toward defense attorneys or prosecutors generally or toward the individual attorney involved." (Ibid. at 836.)

There is another serious difficulty if judges, and not the attorneys, do the questioning of potential jurors. That is, because attorneys will be deprived of the opportunity of an in-depth inquiry, they will fall back on latent prejudices and biases. Potential jurors will be peremptorily challenged for reasons of racial, ethnic, or sexual persuasion, or because of one's occupation, social status, or some other factor that should be irrelevant and would be made so by forthright responses. Thus, we will probably see an exclusion of Gay people, of Asians, and of Blacks, among other groups, of our jury panels at a time when we are making efforts to protect their rights of citizenship generally.

b. The Initiative's Change In the Unaminous Jury Rule Is Unwise.

The Initiative proposes to change the rule which requires a unanimous jury in two ways:

(1) A vote of 10-2 will be sufficient to convict a defendant in all criminal cases except capital cases;

(2) A vote of 7 out of 12 jurors for acquittal is sufficient to cause the case against the defendant to be dismissed.

The requirement of a unanimous jury has been the bedrock of criminal justice system. Only two states allow a person to be convicted on less than a unanimous vote--Oregon and Louisiana.

The purpose of a unanimous jury is to protect against rash or hasty decisions. Since the accused must be proven guilty beyond a reasonable doubt, unanimity is designed to cause the jury to act carefully and to listen to all points of view within the jury. Many juries take a first vote without discussing the evidence. If the vote is 10-2 at the outset, a jury will be less likely to deliberate; i.e., weigh the evidence.

Our best estimate is about 10-15% of all juries in criminal cases fail to reach a verdict. But this number is small--less than 20 out of 175 Superior Court jury trials per year--and infinitesimal compared to the total of 3,000 Superior Court cases. Besides, most of those cases with hung juries are later settled without trial.

Although many defense lawyers would like to see a dismissal after a 7-5 vote in favor of the accused, it is doubtful that very many prosecutors want to be stuck with such an absolute rule. Prosecutors often turn around 7-5 or 8-4 or 9-3 votes in a retrial and secure convictions. In the second trial the prosecutor has a distinct advantage--he/she has seen the defense case. The defendant and the defense witnesses are tied down to the testimony given in the first trial, and the

prosecutor has the time to check out the veracity or the accuracy of those witnesses.

c. The Initiative Would Increase Superior Court Workload

The Initiative seeks to speed-up the time cases take to get through the court system. To accomplish that, the Initiative provides: (1) hearsay may be introduced at a grand jury or at a preliminary hearing; (2) the abolition of the requirement that after a grand-jury indictment, there must be a preliminary hearing; (3) eliminates the right of defendants to call witnesses at a preliminary hearing; (4) removes authority of the preliminary hearing judge to decide legal challenges to the prosecution's case, such as pre-arrest delays, double jeopardy, discriminatory enforcement.

To be sure, the net effect of all of this would be that criminal cases will go rapidly through the Municipal Court, where preliminary hearings and post-indictment preliminary hearings are heard. Such hearings will no longer be searching inquiries, where the strength of the prosecution is tested through cross-examination, legal argument, and the presentation of witnesses by the defense. The preliminary hearing will become what the grand jury is--a District Attorney's rubber

stamp.[16] The evidence, if you can call it that, will be merely affidavits, police reports, and other such second and third-hand statements.

The great difficulty with this approach is that the caseload burden, presently falling on the Municipal Court, will not go away. Instead, it will be shifted to the Superior Court. Cases which are now weeded-out in the Municipal Court will be piled on Superior Court calendars. There these cases will probably clog the Superior Courts.

Prosecutors will experience considerable difficulty. Without the benefit of a preliminary hearing, where witnesses have been tested in court, prosecutors have differently determined the value of the cases, e.g., whether there should be a plea bargain or a trial, or to what extent cases require the allocation of prosecutorial resources.

Defense attorneys will face similar problems.

Judicial statistics indicate that where Municipal Courts are selective with felony cases, that is, where they screen-out weak felony cases, the conviction rate in the Superior Court rises. In counties, such as Santa Clara and Ventura, where a

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[16] Under the Initiative, the grand jury will be even more of a rubber stamp than it was before the Supreme Court required it to hear evidence favorable to the defendant (Johnson v. Superior Court [1975] 15 Cal.3d 248) and set up a post-preliminary-hearing process (Hawkins v. Superior Court [1978] 15 Cal.3d 245). Under the Initiative, hearsay would be admissible at a grand jury.

large percentage of cases reach the Superior Court from the Municipal Court, the conviction rate drops.

This Initiative then will make it more difficult for prosecutors to separate the wheat from the chaff.

d. The Initiative Requires Courts To Hear Motions To Revoke Probation If The Accused Is On Probation AT THE TIME OF A NEW CHARGE

If a person who is charged with a crime was on probation for another offense at the time of the arrest, the prosecutor can make a motion to revoke the probation on the basis of evidence of the new charge.

The prosecutor can ask that the motion to revoke be heard before the trial in the new case, and the court can revoke probation despite the fact that there has not been a trial in that criminal action.

The Supreme Court of California has authorized this procedure (People v. Jasper [1983] 33 Cal.3d 931). The Initiative charges this very little. The Initiative says that the court must hear the motion to revoke before the trial in the new case, if the prosecution has so requested. This is the standard practice anyway. Thus, the Initiative achieves very little, despite the claims proponents make that the Initiative makes it easier to revoke probation.

e. The Initiative's Proponents Misleadingly Cite The Juan Corona Case

The proponents of the Initiative point to the second Juan Corona trial, which cost 4.6 million dollars, as a reason to vote for the Initiative. They compare that case to the first trial that cost $500,000. This is misleading. The Juan Corona case was not retried because of a 10-2 deadlock. Corona was convicted in both trials. The jury selection in the second trial took approximately the same amount of time as did jury selection in the first trial. Considering its widespread publicity and the unusual number of murders charged against Corona, most judge would allow attorney questioning of prospective jurors in any future Corona-type trial, even if the Initiative were in effect.

The Juan Corona case was retried because the Initiative's co-proponent, Hon. Robert Kane, wrote an opinion stating that Corona was ineffectively represented. No provision of the Initiative addresses the issue. The costs associated with the retrial were in large measure due to outlandish prosecution expenses, which has shocked the State Controller and Legislature Analyst.[17/]

17/Hon. Evelle J. Younger, co-proponent of the Initiative, acknowledged that the Corona case has nothing to do with the issues in the Initiative. (Letter of Evelle J. Younger to Jeff Brown dated September 29, 1982.)

f. The Backlog In the Courts Is Decreasing

Contrary to the claims of the Initiative supporters, the criminal courts are reducing, rather than increasing, their backlogs. According to the Judicial Council's Annual Report for 1983, the number of cases awaiting trial has declined for the last two years. In 1981 (as of June 30), for example, there were 9,844 criminal cases awaiting trial; in 1982 (as of June 30) there were 9,665. This year it is estimated that the number of cases awaiting trial will be even lower than 1980's figure.

The courts are presently succeeding through improved procedures and technology in reducing their backlog. Unfortunately, this ill-advised Initiative will reverse this trend.

2. Volunteer Attorneys

This year the Public Defender benefited from the volunteer attorneys from the firm of Pillsbury, Madison, and Sutro and the firm of Morrison and Foerster. The lawyers from each of these law offices spent from three to six months in the office providing felony representation. Their work was outstanding. We owe a great note of thanks to all of them: Theresa O'Loughlin, Anne Libbin, Marc Fairman, Jim Bennett, Debbie Zumwalt, Sarah Flanagan, Tom Nolan, and Jeff Schmidt.

APPENDIX A - FELONY CHARGES

32 - 1

68 - 1

69 - 1

118 - 4

148 - 1

182 - 2

187 - 10

192.1 - 12

192.2 - 1

192.3 - 1

203 - 1

207 - 4

211 - 208

217 - 1

220 - 3

236 - 4

240 - 2

243 - 9

245a - 174

245b - 7

246 - 1

261.2 - 11

261.3 - 4

278 - 6

286 - 1

288a - 16

314.1 - 2

396 - 1

417 - 5

451b - 5

451d - 4

452 - 3

455 - 6

459 - 388

470 - 13

475 - 21

476 - 6

484f - 4

$484f_2$ - 6

487.1 - 97

487.2 - 133

487.3 - 8

496 - 73

520 - 1

594a - 3

664/187 - 23

266i - 3

266a - 2

273 - 5

664/459 - 33

664/487.1 - 2

664/487.2 - 9

664/487.2 - 1

666 - 27

4330 - 2

4390 B&P - 1

4590 - 1

4532 - 6

4573.5 - 2

4573.6 - 7

12020 - 21

12021 - 21

12025 - 14

12303.2 - 1

10851 - 73

23101 -

664/211 - 36

664/1192 - 1

664/266i - 1

23152a -

20001 - 2

23153a - 3

11483 - 4

11350 - 80

11351 - 54

11352 - 41

11355 - 6

11357 - 20

11359 - 76

11360 - 64

11366 - 1

11368 - 2

11373 - 1

11377 - 50

11378 - 35

11379 - 13

APPENDIX B - MISDEMEANOR CHARGES

148 - 363
242 - 633
243 - 177
245 - 170
314 - 40
315 - 8
318 - 11
374 - 3
415 - 185
417 - 128
459 - 181
466 - 105
487 - 235
488 - 557
537 - 54
594 - 328
602 - 218
647A - 84
647B - 622
647F - 366
666 - 263
12020 - 134
12025 - 95
12031 - 67

20A MPC -
20G MPC -
21 MPC - 30
291 MPC - 118
1208 MPC -
1140 MPC - 5
4143 B&P - 214
25661 B&P -
25662 B&P -
11350 H&S - 29
11357 H&S - 204
11360 H&S - 7
11377 H&S - 118
11550 H&S - 17
10851 VC - 74
10852 VC - 111
17601 VC - 303
20002 VC - 263
23101 VC - 163
23102 VC - 1922
23103 VC - 383
2101 UI - 85
12951 VC - 420

SAN FRANCISCO PUBLIC DEFENDER

ANNUAL REPORT

No Annual Report was issued for 1983-84.

ANNUAL REPORT

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

1985

JEFF BROWN
PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

INTRODUCTION

This Annual Report is a statement of the work of the Public Defender's Office. It is a description of the jurisdiction of the office and a record of the expenditures, programs, program costs, and performance objectives for this department of city government.

The Public Defender represents people charged with crimes who do not have money to hire their own lawyers. Twenty thousand such people are represented every year. To carry out that responsibility, the Public Defender has a staff of 69 lawyers and 40 support personnel.

The Public Defender is responsible for seeing that each client is fully and competently represented. This requires the Public Defender to provide each client with a defense that works to the maximum legal advantage of that client. Whatever the Public Defender's status as a public officer, the Public Defender's primary duty and loyalty is to the client, no matter how grievous the changes and no matter how strong the evidence against that person.

The San Francisco Public Defender is elected: one of the few in this country. With that status comes certain responsibilities. First, as an elected official, the Public Defender is accountable to the public in terms of the quality of his/her administration. The public has a right to know the level of expertise; the nature of the Public Defender's hiring;

the efficiency of the office; the level of integrity and honesty.

Second, as an elected official, the Public Defender has the duty to articulate the concerns he has about the overall quality of justice within the system. The elected Public Defender has a duty to be more than a passive player within the system. He or she must speak up as injustices occur in either the working of the judicial system or in the legislative process. In that sense the Public Defender must be a leader of public opinion.

Third, the elected Public Defender has a duty to protect the indigent defense system against negative public opinion or politically motivated action. The Public Defender must never succumb to the temptation to put the interests of public opinion, or his or her own popularity, over the interests of the client.

Throughout this detailed report, we hope the reader keeps in mind the principal concern of this department: that every client receive the highest quality of representation. The task of every employee, whether department head or telephone operator, is to ask this question--"is there anything more, within reason, we could do for the man or woman who uses our services?"

The task of representing clients in this office involves much more than preparing a case and going to court. The

task involves a delivery system where coordination and management are critical. There are 110 employees, and the proper and efficient distribution of work assignments for each person is essential. In order to meet the demand of effectively representing each client's case, an administrative structure exists within which workload is distributed and work performance is closely supervised. A series of goals and objectives has been developed for the organization of the office. The goals address all activities of the office, and the objectives relate to all areas of supervision and management.

Each goal is a broad, organizing principle for action and for reflection about the work and about the conduct of the office. Each objective is a specific target which is measured four times a year.

The objectives have two functions:

1. To insure that the day-to-day work of each section of the office is being done (output objective);
2. To improve the quality of that work (performance improvement objective).

An example of a goal would be: "To insure the highest quality of representation." An example of an objective, would be: "To handle 2,000 felony cases this year" (output) or "to reduce state prison sentence" (performance improvement).

This Annual Report will be divided into discussion of each of the programs. The Report will describe the program costs, program objectives, and will explain how each of the objectives is measured. As a result, the reader will see the successes and shortcomings of the department. We also make specific recommendations for change.

OVERALL OFFICE GOALS

The overall goals of the office are:

1. To insure that each defendant receives competent and zealous representation;
2. To maintain the highest professional and ethical standards on the part of each employee of the department;
3. To insure that the delivery of legal services be as economical as possible without sacrificing the quality of those services;
4. To maintain public respect for the public defender and the criminal justice system.

Everything that is done in the Public Defender's Office is designed to bring about these goals. Every objective is a restatement of practical ways to achieve these goals.

I. JURISDICTION

Section 33 of the Charter:

> [The Public Defender] shall immediately, upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give advice to a person charged with the commission of a crime.

The Public Defender is a creature of the Charter of the City and County of San Francisco. The Charter provides that the Public Defender will represent persons who have been charged with criminal offenses and who are without funds to pay for a privately-retained lawyer.[1/]

In addition to this specific grant of power by the Charter, the California Government Code also authorizes counties, such as San Francisco, to establish public defender offices.[2/] The Government Code sets forth the types of cases which can be handled by a County Public Defender. These include:[3/]

(1) Criminal cases upon request of the defendant or by appointment of the court;

(2) Contempt cases;

(3) Appeals;

(4) Actions for the collection of wages or other demands against a person for under one hundred dollars;

1/ Charter Section 33

2/ Government Code Section 27706

3/ Ibid.

(5) Defense of individuals in civil litigation where a person is being harassed or persecuted;

(6) Cases involving mental health guardianships and conservatorships;[4]

(7) Juvenile cases.

The Welfare and Institutions Code also provides for the appointment of attorneys for indigent parents whose custody rights to their children are being subjected to proceedings for suspension or for termination of those rights.[5]

The law, thus, provides for public defender representation in a wide spectrum of activities. Although the great bulk of the office's activities are in the criminal courts, the office is also quite active in representing persons in mental health and in juvenile cases.

II. OFFICE STRUCTURE, STAFF, BUDGET, AND WORKLOAD

1. Office Structure

The executive officer of the Public Defender's Office is the Public Defender. The Public Defender is elected every four years. The Public Defender appoints all Deputy Public Defenders

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4/ Probate Code Section 1471 also provides for public defender appointment in probate guardianships under specified conditions.

5/ Sections 634 and 317 of the Welfare and Institutions Code.

and a Confidential Secretary.[6/] These employees serve at the pleasure of the Public Defender. The balance of the staff, which includes investigators, secretarial, and other support personnel, are selected through Civil Service rules.

The Chief Attorney is the second executive officer of the department. The Chief Attorney is the person to whom all other supervisors directly report. The Chief Attorney is Acting Public Defender should the former leave the state.

There are six administrative units in the Public Defender's Office. Five of these six relate directly to legal representation and are under the direction of supervising attorneys. These include:

(1) Misdemeanor Unit: 16 attorneys in 6 Municipal Courts.

(2) Felony Unit: 33 attorneys in both the Municipal Court (Felony Division) and in the Superior Court.

(3) Mental Health Unit: 5 attorneys, 2 investigators, and a secretary.

(4) Juvenile Unit: 8 attorneys, 1 investigator, 2 social workers, 3 clerical-secretarial personnel.

(5) Research Unit: 2 attorneys and 1 paralegal.

(6) Investigative Unit: 1 head attorney, as supervisor; 10 investigators; 1 clerk.

(7) Administrative Unit: 1 executive assistant; 1 accounts coordinator.

6/ Charter Section 3.47

2. Staff

A breakdown of the Office by class and job title is:

Attorneys	69
Investigators	13
Executive Assistant	1
Fiscal/Budget Coordinator	1
Legal Steno	3
Clerk Steno	2
Junior Clerk	1
Senior Clerk Typist	2
Clerk Typist	2
Telephone Operator	2
Senior Legal Process Clerk	2
Legal Process Clerk	7
Legal Assistants	4
	109

TABLE A

Cost Breakdown

	(84-85)	85-86
Salaries	$4,293,061.00	$4,528,389.00
Fringes	1,123,805.00	1,076,486.00
Salaries & Fringes Subtotal	$5,416,866.00	$5,604,875.00
Expert Witness	$ 135,000.00	155,000.00
Contracted Services	56,382.00	37,000.00
Travel	1,000.00	800.00
Other Services	61,720.00	192,020.00
Material and Supplies	20,218.00	20,218.00
Membership dues	0.00	200.00
Rental of Property	16,100.00	241,172.00
Equipment Purchase	9,000.00	21,900.00
Equipment Lease/Purchase	29,500.00	91.100.00
Police Dept. (use of Wang Word Proc.)	128,793.00	112,575.00
Electricity	0.00	62.00
Real Estate	1,000.00	17,500.00
Central Shop	18,450.00	16,400.00
Management Training	610.00	1,500.00
Reproduction	1,500.00	1,500.00
Subtotal	$ 479,273.00	$ 908,947.00
Total Costs	$5,896,139.00	$6,513,822.00

3. Budget

Table B sets forth the rise in the Public Defender budgets from FY 1978-79 to the present. Before 1982-83 a large portion of the salary costs for personnel was borne by federal programs. With the Federal Government's elimination of the Comprehensive Emergency Training Act (CETA) and with the further Federal cut-back of Title II Community Development money, the City and County virtually absorbed the cost of Public Defender's Office, causing a rise in the City's portion of this budget. Since FY 1982-83 the rise has reflected only those cost increases mandated by the city charter. In FY 85-86 we anticipate a sharp rise due to charter-mandated costs and to the cost of renting new premises.

TABLE B

Comparative Budgets 1978-79

	78-79	80-81	81-82	82-83	83-84	84-85	85-86
Ad Valorem	2,201,463	2,207,211	2,938,032	4,415,465	5,026,091	5,813,336	6,513,822
C.E.T.A.	Not avail.	528,892	416,125	---	---		
Title II (Community Development)	---	162.076	206,573	---	---		
A.B. 90	66,000	73,739	52,751	71,000	73,000	83,803	91,403
Total	-Not avail.	2,971,918	3,613,481	4,486,465	5,099,091	5,896,139	6,605,225

4. Program Costs

Table C represents a salary cost for each program or each administrative unit within the Public Defender's Office.

TABLE C

Public Defender, Chief Attorney and Administration	$ 165,500.00
	323,982.00
	489,482.00
Felony	1,776,087.00
Misdemeanor	693,791.00
Mental Health	361,669.00
Juvenile	453,791.00
Research	160,307.00
Investigation	393,013.00
	$4,328,140.00

5. Summary of Caseload

	FY 83-84	FY 84-85
Felonies		
Superior Court	1,493	1,338
Municipal Court	4,152	4,256
	5,645	5,594
Less cases held to answer or certified:	1,434	1,073
Total:	4,211	4,521
Misdemeanor	7,777	9,158
Juvenile Cases		
Juveniles	2,211	2,010
Adults	395	522
	2,606	2,532
Mental Health		
	4,052	4,100
	18,438	20,524

6. Comparison of Caseload

The following is a breakdown of the Public Defender caseload for a six-year period.

	1978-9	1979-80	1980-81	81-82	82-83	83-84	84-85
Felony	5,329	5,346	5,450	5,963	5,769	4,211	4,521
Misdemeanor	12,855	9,654	10,431	11,762	9,593	7,569	9,158
Mental Health	2,601	1,470	1,381	1,054	3,080	4,052	4,100
Juvenile	2,040	2,895	2,418	2,598	2,626	2,606	2,532
	22,825	19,365	19,686	21,377	21,068	18,646	20,311

III. Executive Officers - Public Defender and Chief Assistant

Program Cost: $165,500

Program Goals:

(1) To provide over-all leadership.

(2) To supervise the expenditure of money and use of resources.

(3) To supervise the Head Attorneys in their management of attorneys and caseloads.

(4) To develop policies and procedures.

(5) To make appointments for discretionary and civil service position.

(6) To evaluate the implementation of all office policies and duties.

(7) To maintain contacts with other City and State agencies that affect the work of the Public Defender.

(8) To provide public education about the work of the Public Defender and the work of the criminal justice system.

(9) To insure a high ethical standard in the performance of Public Defender duties.

With the elected official who is Public Defender the "buck stops here". The ultimate responsibility for the entire operation is upon the person of the Public Defender. As such, the Public Defender must clearly define the duties and the goals of the department, and see that these are carried out.

The Chief Attorney is the chief executive officer who assists the Public Defender in the development of policies and procedures. In addition, the Chief Attorney has direct

responsibility for the execution of those policies and proceedings. The Chief Attorney is the link between policy making and the line work of the office.

A major part of the Public Defender's function is to lobby the Mayor and the Board of Supervisors for the budgetary needs of the office. The Public Defender must develop the office budget and must work to see that the budget is approved.

The Public Defender also must educate the public at large about the function of the defense attorney in the criminal justice system. A large amount of the Public Defender's time is spent answering inquiries about critical issues which affect the criminal justice system. It is an understatement to say that those issues, whether they relate to drunk driving or to child abuse or to the decisions of the California Supreme Court, are matters of passionate debate.

The Public Defender must have the courage to enter that public debate and must provide an informed view, no matter how unpopular that view may be. As the National Legal Aid and Defender Commentary to Standard 3.5 put it:

> ... (the director of a defense system) has a duty in terms of public education which, if he fulfills it will need to give him the kind of support that can be expected to arise out of the more decent instincts of citizens of a society dedicated to democracy and fair play. If he will approach the community, not as an apologist for his performance, but as an interpreter and reinterpreter of a free society's

own mandates concerning its constitutional guarantees; if he will approach this giant jury with the same skill that it is hoped that he approaches a petit jury, he will not only give strength to the foundations and structure of his own office but will do much to enhance that of the judicial process as a whole.

IV. Administration

Program Cost: $323,982

Program Goals:

(1) To provide clerical, secretarial services for the office.

(2) To provide data collection.

(3) To prepare payroll and process the expenditures for office.

The Administrative Unit is managed by Sharon Christiansen, the Executive Assistant. The Unit consists of five components:

(1) Word Processing (2 legal stenos, 2 transcribers, 1 clerk steno).

(2) Senior Legal Process Clerks (3 persons)

(3) Legal Process Clerks (7 persons)

(4) Accountant

(5) Reception Area Workers (2 telephone operators, 1 receptionist).

(6) Court Alternative Specialist (1 person)

The work of these support personnel is critical to the operation of the Public Defender's Office. Without them the lawyers could not function. Just as important, the Administrative Unit personnel provide an environment for the clientele and the public. If phone are answered; if documents are produced in a timely fashion; if the public is treated with courtesy, the work of the office will improve. If people are impressed that support personnel can effectively handle their questions and problems, the public will view the public defender's office as a resource, not just another bureaucracy. As public attitude and funding correspond to the performance of the office, so the morale of the employees of the office corresponds to the public attitude. Good morale equals high performance, an equation that yields a net positive to the city and the Public Defender's Office.

V. Felony Unit

Program Cost: $1,776,087

Program Goals:

(1) To provide effective legal assistance in all felony cases in the Municipal and Superior Courts.

(2) To decrease the number of cases where the client is held to answer for a felony.

(3) To decrease the number and length of state prisons sentences.

(4) To reduce felony conflicts.

The Felony Unit consists of 33 attorneys. The unit handles over 4,000 felony cases in the Municipal and Superior Court. It is supervised by two Head Trial Attorneys, Robert Berman and James Pagano.

The work of the attorneys in this unit begins in the Municipal Court where a felony defendant is arraigned on a charge. The court makes a determination whether the individual defendant can afford his/her own attorney; and if he/she cannot, the Court will appoint a Public Defender. The Public Defender will then make appropriate bail/OR motions and set a date for a preliminary hearing. At the preliminary hearing, the prosecution will attempt to show that there is enough evidence to hold the defendant to answer in a trial to be held later in the Superior Court.

The San Francisco Public Defender's Office is unique in its handling of felony cases. The independence of the office gives it the freedom to employ a "vertical representation system" in defending its clients. This means that the same lawyer represents the client throughout legal proceedings in both the Municipal and Superior Courts. The value of this system lies in its humanness and consistency. Defendants are not passed from attorney to attorney like so much baggage, but receive personal

and individual attention and service from the same attorney at all phases of the process.

Vertical representation insures the consistent handling of the defendant's case throughout the life of the case. It makes the attorney fully accountable to the client for all decisions and actions on the client's behalf. This accountability is an incentive for the attorney to give his or her best efforts toward the client's cause.

The alternative process of "horizontal representation" leads to buck passing and impersonal legal representation because the client has a different attorney in every phase of the case. In a "horizontal" system the public defender is in the business of processing, not defending, clients. It is a system that serves the court and the courts' preoccupation with the calendar.

Table D represents the workload and the disposition of cases of the Felony Unit in FY 82-83 and 84-85.

TABLE D

Disposition of Municipal Court Felonies

Fiscal Year	82/83	83/84	84-85
Arraigned	4,152	5,175	4,256
Dismissals	823	981	657
Diverted	133	210	206
Other Counsel	314	390	231
Incompetent	27	17	15
Pleas to Misdemeanor	369	649	370
Held to Answer	918	815	913
Certified Pleas	530	533	446
Reduced to Misdemeanor	313	n/a	232

Activity and Disposition of Superior Court Cases

a. Case Activity			
Arraignment	1,115	2,764	1,276
Motions to Revoke	459	434	1,000
Certifications	522	530	446
Sentences	1,753	1,528	1,338
b. Case Disposition			
State Prison	479	490	524
Probation	1,079	815	549
Dismissals	193	198	233
Other	181	25	32
c. Trial Activity			
Guilty Verdict	109	n/a	98
Acquittals	23	n/a	15
Hung Juries	11	n/a	26

These are several points that should be emphasized by those statistics.

First, state prison commitments remain high. Approximately 35% of Superior Court sentence now carry a prison term. The phenomenon that we notice with our own cases is also true of private attorneys and community defenders. It is also true of Superior Court cases outside of San Francisco.

Since 1980 and particularly since the passage of Proposition 8 in 1982, the overall state trend in state prison sentences has been upward. Sentences are steeper, judges more severe, the procedures changed to favor the prosecution. The result is that criminal defendants are much likely to go to state prison whether they plead guilty or whether they go to trial. Take this example:

> Defendant is charged with burglary. He has three prior residential burglaries. His maximum exposure is 21 years--6 for the present offense, 15 for the priors.

The defendant can go to trial, be convicted and face up to 21 years. He can plead pursuant to a plea bargain, but the prosecutor has considerable leverage in light of the maximum penalty. Thus, a defendant will be willing to trade a shorter state prison sentence in order to avoid the maximum sentence. A few years ago when this same offense carries a maximum of 9 years, he might be willing to hold out for a county jail sentence.

Perhaps, the only point of consolation is that the number of state prison sentences in their counts has remained relatively stable since 1981. Throughout in California there has been a continuous growth in the number of state prison commitments.

Table E State Prison Commitments.

1. Persons

	San Francisco	California
1979	525	9,874
1980	593	11,347
1981	841	13,932
1982	724	15,932
1983	634	18,398
1984	646	17,602

Source: (California Department of Corrections)

2. Cases

	San Francisco	California
1979	517	8,878
1980	467	10,311
1981	795	13,971
1982	759	25,122
1983	756	16,677
1984	841	18,094

Source: (Adult Felony Dispositions: Department of Justice)

3. Prison Commitments per 100 convictions

Six months Ending	State	Quarter Ending	State
6-12/31/77	29%	3/31/84	40
1-6/30/78	33%	6/30/84	41
7-12/31/78	34%		
1-6/30/79	34%		
7-12/31/79	34%		
1-6/30/80	35%		
6-12/31/80	36%		
1-6/30/81	37%		

Source: (Judicial Council)

4. Public Defender Cases -- Commitments To State Prison

78-79	402
79-80	390
80-81	538
82-83	479
83-84	490
84-85	524

Second, there has been a noticeable change in the way plea bargaining is conducted. As our status indicate a high percentage of felony pleas occur at the Municipal Court level. We call the certified pleas--pleas are taken by a Municipal Court judge and certified to the Superior Court.

In other annual reports we have written of our distress with this process. We know that pleas taken so early in the process are more likely to be done without full investigation and consideration of the merits of the case. However, there are reasons why certified pleas have become such a prominent part of criminal law practice.

For one thing, the penalties associated with felony cases are so serious that district attorneys can offer a reduction in potential sentences in exchange with an early plea.

For another, Proposition 8 restricts and discourages plea bargaining in the Superior Court. In many ases, the Municipal Court is the only forum for the negotiation and acceptance of a plea of guilty.

The third trend is the increase in the number of jury trial. This impact reflects an encouragement by the administration of the Public Defender to fight cases in the face of severe penalties.

An office that fails to try its share of cases is an office that has lost the will to fight for the client. It is an office that lacks credibility because it is an office that will roll over raher than hold out for the client's interests.

Misdemeanor Unit

Program Cost: $753,944.13

Program Objections: (1) to represent indigent defendants in misdemeanor cases in the Municipal Court; (2) to limit the number of misdemeanor convictions; (3) to try as many misdemeanor cases as is necessary to protect the interests of the clients.

The Misdemeanor Unit consists of 19 lawyers. It is supervised by Head Trial Attorney Daro Inouye. The Unit handles cases in six departments of the Municipal Court. As such, it carries a tremendous caseload--roughly 10,000 cases a year.

Misdemeanor offenses carry a maximum sentence of six months or a year in the county jail and a fine of between $500 and $1,000, depending on the charge.

The misdemeanor courts deal with an enormous variety of offenses--from public drunkenness to auto burglaries and aggravated assaults. Table F indicates the work of the court.

Table F -- Misdemeanor Unit Cases

	83-84	84-85
Misd. Cases	7,165	9,158
Motion to Revoke	612	802
	7,777	9,960

The increase this year reflects a sharp increase in the number of misdemeanor filings in the first six months of 1985. (See appendix A.) And that, of course, was caused by a sharp increase in felony and misdemeanor.

A matter of particular concern is the number of jury trials. Large scale defense operations can develop a "cop-out" ever goes to trial. The routine of plea bargaining becomes almost mesmerizing, and jury trials become a departure from that routine. The net effect is that jury trials decline as a institution, because lawyers and judges are too lazy or too afraid to make the additional effort of preparation for the trial.

Table indicates the jury trial activity over the past seven years.

	78-79	79-80	80-81	81-82	82-83	83-84	84-85
	87	85	135	78	92	80	91
Convicted	n/a	37	58	38	42	-	56
Acquitted	n/a	30	38	26	40	-	20
Hung Mis.	n/a	18	39	14	12	-	15

The most important result for an attorney in criminal cases in the dismissal of his/her client's case. Over the many years the number of cases thrown out by the District Attorney or the count is high--it has ranged from 35-40% in the misdemeanor area. A high percentage are dismissals after a plea of not guilty is entered. A portion of the dismissals result when defense and prosecution agree to defer prosecution and instead have the defendant divert from the criminal justice system for a

specified period. If the defendant completes a period of community service work and stays out of trouble, the court enters a dismissal.

Table G sets out the pattern of dismissals and diversions since FY 78-79.

TABLE G

Fiscal Year Comparisons - Misdemeanor Unit

	New Cases	Dismissals	Diversions
82-83	8,375	2,522	1,483
81-82	9,826	2,473	2,137
80-81	8,622	3,404	1,198
79-80	8,395	3,433	577
78-79	12,136	Not av.	Not av.

VI. JUVENILE UNIT

Program Cost: $486,417

Program Goals:

1. To represent juveniles in delinquency cases and in cases where the District Attorney seeks to exclude juveniles from the juvenile justice system.
2. To represent adults whose parental rights are being suspended or terminated.

The Public Defender's Office represents juvenile clients in the Juvenile Court at the Youth Guidance Center. The juvenile court unit of the office has a staff of seven attorneys, one investigator, two social workers, and three secretaries. The unit is supervised by a Head Trial Attorney, Joseph L. Spaeth.

Most of the Public Defender juvenile clients are charged with having committed offenses which, if the juveniles were adults, would be crimes. In these proceedings the District Attorney files a petition pursuant to Section 602 of the Welfare and Institutions Code. The case is later heard before a referee or before a Superior Court judge.

The Public Defender also represents other juveniles who are alleged to have behavior problems. These juveniles are not charged with committing any acts which would be criminal in adult courts. Typically, these are children who are charged with truancy, with curfew violations, or with being beyond parental control. These are called "status" offenders. Petitions pursuant to Section 601 of the Welfare and

Institutions Code are filed in these cases. If these petitions are granted, the child is taken from the control of his or her parents.

In certain criminal-type cases, the District Attorney will attempt to exclude a juvenile from the juvenile court process and to have the juvenile prosecuted as an adult in an adult criminal court (pursuant to Section 707, et seq., Welfare and Institutions Code). Before that action is taken, the juvenile receives a hearing on whether or not it is proper to have the juvenile tried as an adult.

The Public Defender also represents parents in Juvenile Court where the Department of Social Services is attempting to suspend or to terminate the parents' custody over their children.

The Public Defender is a forceful and a zealous advocate for the protection of the rights of the juvenile. Juvenile cases are adversary proceedings, and the attorney must use all of his talents in presenting the factual and the legal defenses on behalf of the juvenile client. At the same time, the Public Defender must also be sensitive to the special problems confronting a juvenile offender. Attorneys in the juvenile courts must be able to identify emotional and educational difficulties and to explore the alternatives which exist outside of the legal system. The lawyers must utilize fully all of the community-based agencies which provide social or psychiatric assistance.

Table H -- Juvenile Statistics

Fiscal Year Comparisons

1. Caseloads--Public Defender

	78-79	79-80	80-81	81-82	82-83	83-84	84-85
601	127	141	145	139	89	30	66
602	2,119	1,410	2,118	2,470	2,217	2,181	1,944
707	NA	19	15	12	8	0	5
300	225	325	197	202	320	39	522
Total	2,471	1,895	2,475	2,823	2,634	2,606	2,537

2. Commitments to CYA--Public Defender Cases

78-79	96
79-80	81
80-81	89
81-82	90
82-83	65
83-84	86*
84-85	73*

3. Commitments to Log Cabin--Public Defender Cases

79-80	136
80-81	95
81-82	102
82-83	103
83-84	113*
84-85	128*

All cases--P.D. and non-P.D. cases.

MBO OBJECTIVES

1. To represent juveniles in at least 2,200 cases petitioned under Sections 601, 602, and 707 W&I Code and 300 adults in Section 300 W&I Code proceedings

Our statistical findings parallel those of the Department of Justice and the Judicial Council (see Table P):

TABLE P

Juvenile Court Caseloads and Filing (All Cases)

1. Department of Justice: Active Juvenile Probation Caseload 1972-81

1972 - 1,997	1978 - 1,119
1973 - 1,956	1980 - 1,333
1974 - 2,004	1981 - 1,313
1975 - 1,940	1982 - 1,385
1976 - 1,837	1983 - 1,348
1977 - 1,144	

2. Judicial Council Reports: Juvenile Court Filing

	76-77	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85
Total Filings	2,355	2,017	2,130	2,116	1,933	2,295	2,356	2,158	
Original Filings	1,597	1,484	1,467	1,426	1,178	1,388	1,128	1,278	
Subsequent Filings	758	533	653	690	755	907	1,030	1,078	
Contested Matters	480	437	516	621	556	530	270	305	
601 W&I	209	172	93	132	119	87	49	71	
602 W&I	2,098	1,815	2,026	1,979	1,456	1,301	1,254	1,083	

According to Tables O and P, the caseload at Juvenile Court has not changed dramatically since FY 78-79. The most remarkable feature of these statistics is the decline of 601 W&I cases and the increase of 300 W&I cases--patterns which are likely to stay in effect.

It is our opinion that petitions against adults regarding termination of parental rights will remain high for the foreseeable future. There are two factors influencing this increase of workload:

1. S.B. 14 which mandates hearings on a six-month basis;
2. The increase of staff by the Department of Social Services (D.S.S) and the City Attorney to bring these petitions against allegedly inadequate parents. The City Attorney has three (3) attorneys assigned full time to this work, in addition to a full-time supervisor. The City Attorney also has the use of five (5) D.S.S. court officers to investigate and to prepare these cases. Arrayed against this are three deputy public defenders.

2. <u>To utilize social work in at least 225 delinquency cases</u>

The Juvenile Unit employs two full-time social workers. They interview clients, render evaluation, and provide dispositional plans. They do this work in 601, 602, and 707

W&I cases. Their work has been successful in reducing log cabin and CYA commitments and in persuading the court not to exclude the juvenile from the juvenile system.

The Public Defender social workers have an important advantage: the information is conveyed within the setting and the protection of the lawyer-client relationship. Thus, the client and the client's relatives are more likely to speak candidly about their problems. Accordingly, the social worker is better able to make an accurate diagnosis and an appropriate plan for treatment or assistance.

Last year we utilized social work staff in a total of 302 cases. We thereby exceeded our MBO objective, and we have adjusted our target upward to 350.

3. To involve community-based agency participation in at least 350 cases

There exists a rich network of community-based agencies, many existing on private funding, others on public and quasi-public funding. They have trained counselors and instructors and they serve specialized clientele; i.e., Hispanic youth in the Mission by "Real Alternatives." Currently, the office makes good use of these programs; the office will continue to increase its involvement with these groups.

The use of these agencies is a healthy alternative to incarceration in juvenile hall, log cabin, or CYA. These agencies provide guidance in educational, emotional, and

behavioral problems for young people; whereas custody hardens young people, isolates from the mainstream, and tends to criminalize them.

This year the Juvenile Court utilized community-based agencies in 446 cases, greatly exceeding the MBO target of 350.

4. To limit the number of 707 W&I certifications to 10

The exclusion of the juvenile offender from the juvenile justice system is a drastic step. It means that the youth is punishable in the same way that an adult is and can suffer the state prison sentences for lengthy terms.

A youth charged with certain crimes, like murder, robbery, rape, will be presumed to be unfit for the juvenile justice system. These crimes are listed in Section 707b. Youth who are charged with all other offenses, not set forth in Section 707b, are not presumed; and the burden is on the prosecutor to establish unfitness.

The Public Defender has made every effort to keep youth charged with crimes, even serious crimes, within the juvenile justice system.

We feel that rarely, if ever, are youthful offenders "helped" by adult punishment or deterred from further criminality. The youth is merely hardened or criminalized further by exposure to the world of the adult offender. We feel, too, that adult treatment is never really carried out--the

juvenile remains largely isolated from adults and held in separate facilities, whether in the county jail or state prison. And there is a final irony: most of those excluded from the juvenile court end up going to the California Youth Authority after being tried and sentenced as an adult.

Fortunately, we held the total number of 707 W&I exclusions in FY 83-84 down to just five cases.

Mental Health:

Program Cost: $319,729

Program: To represent the mentally ill in conservatorship proceedings, to represent the retarded in progress related to their treatment and placement, to represent the insane in proceedings for the restoration of their sanity.

The Public Defender is the principal attorney in the community for the mentally ill. Most of the work of the Mental Health Unit is done in the defense of petitions to establish mental health conservatorships pursuant to Section 5500 of the Welfare and Institutions Code. This conservatorship petition is the legal procedure for establishing judicial control over a person who is alleged to be a danger to himself or others or who is gravely disabled to the extent of lacking the ability to provide food, shelter, and care for himself/herself. If the petition is granted an individual may be placed in a state hospital or in a local facility, whichever the Court deems appropriate.

In these cases the Public Defender is appointed to represent the proposed conservatee. As the attorney for the proposed conservatee, the Public Defender must review the medical reports, witnesses, and explore alternative placement if the client contests the hearing.

The Mental health Unit also represents mentally ill clients who have been sent to state hospitals. These involve conservatees committed under Section 5500 Welfare and Institutions Code who have a right to periodic review of their status and their treatment, clients who have been found incompetent to stand trial under Sections 1368-70 of the Penal Code, those who have been found not guilty by reason of insanity under Section 1027 of the Penal Code, mentally disordered sex offenders pursuant to Section 6300 of the Welfare and Institutions Code, and mentally retarded dangerous persons under Section 6500 Welfare and Institutions Code.

These clients must be regularly visited and interviewed. If the state hospital makes an inappropriate recommendation for a patient, the Public Defender must bring that fact to the attention of the Court. If it is necessary a jury trial may be held to determine whether or not a person should be kept in a state hospital or whether or not his/her parole should be revoked.

Table I--Summary of Mental Health Unit's Work

STATISTICS FISCAL YEAR 1983-84

Probable Cause Hearings		2390
New LPS conservatorship Applications		828
Granted	278	
Denied	550	
Total appearances (1138)		
Renewal LPS Applications		517
Granted	241	
Terminated	276	
Total Appearances (849)		
Writs filed		108
Granted	7	
Denied	33	
Withdrawn	58	
(The most frequent cause for withdrawal of the writ was release of petitioner by facility before hearing)		
Rehearings		43
Petition denied	12	
Terminated	11	
Withdrawn	20	
Post Certifications		24
Granted	9	
Denied	6	
Withdrawn	9	
Medical Consents		26
Granted	17	
Denied	4	
Withdrawn	5	
Miscellaneous matters		43
(Change of conservator, placement reports, etc.)		
Petitions - 6500		1 granted
In re Hop Petitions		1 granted
Taken over by Private Counsel		11
Jury trial demands		10
Jury trials		
TOTAL CIVIL CLIENTS REPRESENTED		4002

CRIMINAL CASES

P.C. 1026.5 (Extensions)	12 (10 Jury trials)
P.C. 1026.2 (Writs)	32 (13 Jury trials)
Misdemeanor matters	6
TOTAL CRIMINAL CASES	50

VII. RESEARCH UNIT

Program: To prepare writs and appeals, legal memoranda in complex cases; to provide research for cases in litigation; to provide technical assistance in writs and appeals.

Program Cost: $188,732.78

The newest administrative component of the Public Defender's Office is the Research Unit. It is located in the Public Defender library. One Heal Trial Attorney, Grace Suarez, another attorney and one paralegal work there. The unit writes briefs, writs and appeals, researches the law for cases in trial, and provides technical assistance to attorneys in the preparation and filing of pleadings.

The unit has a small library. It has an indexed brief bank, and a microfiche file containing cases of the State Public Defender. The unit also has a Westlaw terminal to perform computerized leagl research.

The Unit has the use of two WANG Word processors which generate work rapidly.

The value of the Unit cannot be overstated. It generates an average of 18 documents a monmth, including petitions for writs, appellate briefs and trial motions. Not included are the many questions handled orally, and the ongoing technical assistance provided to lawyers in trial. This can include anything from performing a Westlaw search for an attorney about to argue a motion to drafting special jury instructions.

The Unit's staff constantly maintains and updates a brief bank containing several hundred documents. There are indexed on the Wang word processor for easy retrieval. In addition, a library of forms, kept online on the Wang system, provides attorneys with up-to-date, technically correct documents.

Although the library is quite small, it contains updated practice books and materials from recent lectures, making it an efficient research tool. Maintaining the library and brief bank occupies a substantial portion of staff time.

The Unit produces a monthly bulletin citing and summarizing appellate decisions and issues memos as needed on important cases and new laws.

The work of the Unit enhances the quality of the trial attorney's representation. The harried trial practitioner can still submit a well-researched and drafted motion, and seek pretrial writ relief within hours of the motion's denial. The attorney can keep up with the torrent of new cases published every year, and can feel confident that the advice he gives is based upon an understanding of the most current law.

In addition, staff of the Unit organize and conduct training sessions and seminars. During 1984-85, the Unit conducted over 12 hours of training sessions, all approved for specialization credit by the State Bar.

VIII. INVESTIGATION UNIT

Program Cost: $492,963

Program Goals:

1. To obtain information about the facts and circumstances regarding the cases of the individual clients represented by the Public Defender
2. To provide necessary support services to attorneys in furtherance of the representation of those cases

The Investigative Unit consists of a Head Trial Attorney, Gordon H. Armstrong, who supervises the unit; and 12 investigators; and one paralegal. The unit carries out investigation for the Felony and for the Misdemeanor Unit.

An investigator starts working on a case when an attorney makes a written request. The request may ask that a witness be located and interviewed, that the crime scene be photographed, and/or that a document be located. A suspense date is set for the completion of the investigation. Supplementary requests may be made. The same investigator will be assigned to the case throughout the life of the case.

Solid and competent investigation is absolutely essential to effective representation. It can literally win the case for the lawyer. It can provide the exculpatory evidence which proves a client's innocence. It can find those facts which contradict the prosecutor's case.

Offices simply cannot afford to neglect adequate and professionalized defense services. As the 1976 Commission on Defense Services stated:

> Criminal investigation is an essential element of criminal defense. Offices lacking adequate investigative staff tend to neglect the investigative function and rely on the state's version of witness statements and other evidence. It is not cost-effective for lawyers to do all of the investigation connected with a case. Moreover, where lawyers conduct investigations, it may be necessary to have an investigator along to refute charges of impropriety and to have a witness who can testify at trial if necessary.
>
> Secondly, since investigation is increasingly becoming a professional skill requiring professional expertise, investigators should be hired who have the professional skills required. Professional investigators greatly improve the overall quality of service in a defender office.
>
> In order to ensure that investigations are conducted in every case where there is a factual question not subject to objective determination, an adequate attorney-investigator ratio is necessary. At least one investigator should be employed for every three staff attorneys. This figure is based upon the experience of defenders from coast to coast. (At p. 333.)

This year the Investigative Unit completed 1780 investigations.

The Investigative Unit experienced the selection of 10 investigators through the Civil Service. At last the temporary status was ended.

Departmental Priorities During 1984-85

Training

Much emphasis was placed on training for both attorneys and investigators during FY 1984-85. The nature of the training consisted of (1) formal lectures on precise subject matter (2) general discussion on broader issues (3) training outside the office at Public Defender Association and Public Defender Investigator Association sessions.

With the attorneys the emphasis was preparation for the criminal law specialization examination in October, 1984. The training focused on subjects likely discussed on the test. The formal training also provided the attorneys with accumulated training hours necessary to qualify as a criminal law specialist. The net effect of this instruction was that 21 out of 23 attorneys in our office passed the examination and qualified or are in the process of qualifying for a certificate of specialization.

The investigator training averaged 7 hours training per investigator. In the new fiscal year we expect continued and

intensified training in criminal investigation work and updating in the developments criminology.

Operation Cleanslate

This last year the Public Defender's Office made a concerted effort to inform the San Francisco community of the opportunities available to clean up criminal records. Dubbed "Operation Cleanslate", this campaign consisted of the distribution of circulars to every community agency in San Francisco and to every newspaper.

The purpose of Operation Cleanslate was to allow individual who had been totally rehabilitated or wrongfully accused to expunge, seal or upgrade their records, depending on the individual's case.

Operation Cleanslate caused hundreds of people to call the Public Defender and in most cases take advantage of the relief the law provides. We were able to assist over 250 individuals who had earned their right to a good name and a respectable place in society.

Conflicts

The Public Defender is required to represent all persons accused of crimes who do not have enough money for their counsel. However, cases arise where the Public Defender cannot represent an accused who without funds for his own counsel. For example, there may be more than one person charged in a case, and the Public Defender can only represent one person. In that

case, the Public Defender declares a conflict-of-interest, and a separate, private attorney will be appointed. Conflicts can arise also where a public defender client becomes a witness against another public defender client. In that case one or the other will have to have separate non-defender counsel.

In certain cases, conflicts may declare in debatable circumstances. For instance, the public defender may have represented a witness in a current case years ago. It is questionable whether the public defender really has to get out of the case.

We have sought to limit declarations of conflict-of-interest to those situations required by law and ethics. In multiple defendant cases, we usually represent the "heaviest" defendant--the one whose case requires the most work.

Conflict costs are expensive. What is more a public defender that shies away from serious cases by finding a far-fetched reason for a conflict does a disservice to his statutory responsibilities. Our tight management of the conflict problems has brought about a substantial reduction in conflict costs to the City and County of San Francisco. The following table states the number of conflict cases, as well as the costs over the last several years.

Table J--Conflict Cases

Conflict Costs

	Municipal Court	Superior Court	Total
1982-83	605,822	794,992	1,400,814
1983-84	600,719	840,201	1,440,920
1984-85	508,893	968,707	1,477,602

Number of Conflict Cases

	Municipal Court	Superior Court
1982-83	2096	1111
1983-84	1532	1025
1984-85	1432	787

As Table J indicates the cost and number of conflict cases have either stabilized or been reduced in recent years, whereas the contrary is true in almost every other major jurisdiction in California.

Volunteer Attorneys--Pillsbury, Madison and Sutro

For ten years the Public Defender's Office has benefited from the volunteer participation of Pillsbury, Madison & Sutro. For stints of up to 6 months an attorney from one of the nation's most prestigious firms works in our office handling felony cases. The quality of their work has been outstanding, reflecting the excellence and public spirit of their firm and themselves individually. We all owe a great vote of thanks to these fine lawyers.

Reform of the Civil Service Classification System

The civil service classification system deserves serious review in this office and probably in every other office where attorneys are employed by the City. The classification system divides attorneys up into 7 classes:

Civil attorneys
Trial attorneys
Senior attorneys
Principal attorney
Head trial attorneys
Assistant chief attorney
Chief attorneys
Department head

The problem with the classification hierarchy is that their premium is paid for supervision and management, despite the fact that the most critical skills relate to lawyering, not management. Yet the Charter and Civil Service Rules make it difficult to reward attorneys with trial skills who are uninterest in management. For example, a top-flight trial attorney who is not managing reaches the highest level of the pay scale with the rank of principal. He shares that rank with many others doing important, but less serious work. There are few incentives for such an individual to take on added trial responsibilities.

What departments do, of course, is two things:

(1) Give the best lawyers management jobs whether they are very good at management or not, thus giving effect to the "Peter principle."

(2) Pretend that the skilled trial attorney does management jobs, when in fact, that is not so.

We will propose this year to civil services a new civil service rank which allow individuals with the highest litigation skills to do trial work. We suggest the title of "Advanced Trial Attorney" be accorded individuals capable of doing complex felony litigation, with an upgraded classification and pay-scale. The number of positions should be limited and the pay should be roughly that of a head trial attorney. This sort of classification will allow departments to retain experienced and competent litigators, and it will eliminate the hard feelings that many of them have of not being paid the same as management.

APPENDIX A

Workload and Activity of Municipal and Superior Courts

CASES SET FOR PRELIMINARY HEARING

1-06-78	2,524
7-12-78	2,614
1-06-79	2,810
7-12-79	3,713
1-06-80	3,466
7-12-80	3,568
1-06-81	3,816
1-06-82	3,670
7-12-82	4,801
1-06-83	3,027
6-12-83	3,103
1-06-84	2,883
6-12-84	2,656
1-06-85	4,011

FELONY ARRAIGNMENTS

1-06-78	1,269
7-12-78	1,283
1-06-79	1,337
7-12-79	1,208
1-06-80	1,464
7-12-80	1,434
1-06-81	1,820
7-12-81	1,428
1-06-82	1,097
7-12-82	1,023
1-06-83	966
6-12-83	1,039
1-06-84	989
6-12-84	988
6-12-85	956

(semi-annualized)

MISDEMEANOR ARRAIGNMENTS

1-06-78	16,745
7-12-78	15,830
1-06-79	14,533
7-12-79	12,587
1-06-80	13,432
7-12-80	13,565
1-06-81	13,727
7-12-81	14,955
1-06-82	14,402
7-12-82	13,560
1-06-83	10,224
6-12-83	9,517
1-06-84	10,086
6-12-84	8,578
1-06-85	11,260

SUPERIOR COURT SENTENCES

1-06-77	1,381
7-12-77	1,226
1-06-78	1,305
7-12-78	1,520
1-06-79	1,467
7-12-79	1,372
1-06-80	1,552
7-12-80	1,428
1-06-81	1,587
7-12-81	1,610
1-06-82	1,559
7-12-82	1,748
1-06-83	1,828
6-12-83	1,531
1-06-84	1,811
6-12-84	1,634
1-06-85	2,114

CERTIFIED PLEAS

1978-79	314
1979-80	396
1980-81	462
1981-82	822
1982-83	1,649
1983-84	1,065
1984-85	1,400

Source: Judicial Council

FELONY ARRESTS

1-06-78	5,668	1-06-82	7,871
7-12-78	5,439	7-12-82	8,192
1-06-79	5,773	1-06-83	7,927
7-12-79	6,022	7-12-83	8,171
1-06-80	6,548	1-06-84	8,556
7-12-80	8,063	7-12-84	9,320
1-06-81	8,338	1-06-85	9,454
7-12-81	8,336	7-12-85	9,116

(semi-annualized)

Removal From the Hall of Justice

In 1978, Jeff Brown wrote every member of the San Francisco bar:

> "A law office cannot inspire the respect and confidence of its clients when the clients and their family, friends, and prospective witnesses must pass through a metal detector and be subject to search in order to confer with their attorneys.
>
> Minimum standards set forth by the National Advisory Commission on Criminal Justice Standards and Goals (Standard 13:13.2) mandate the removal of our law offices from the police-court complex. Our offices must be moved out of the Hall of Justice and into other available public facilities."

What this statement did not say was that the San Francisco Public Defender also had one of the congested, crowded and unsaintary working conditions in city government. The office space operated in violation of fire and OSHA regulations. As the American Bar Association sponsored report noted in 1979:

> "It may seem strange to begin a list of problems related to financing with the subject of office space. However, the offices of the Public Defender are so inadequate and appalling that probably no significant improvement in the overall quality of the program is possible until the space problem is remedied....

/
/
/

More than 100 employees, more than 50 of them lawyers, are crowded into the Public Defender's approximately 5,500 square feet of space on the second floor. The average of 55 square feet per employee is less than recommended for modern detention facilities, and this does not take into account the hundreds of defendants, witnessses and other visitors who come to the offices daily." (Lefstein: Criminal Defense Services for the Poor, May 1982.)

After years of studies and frustrations, the Mayor and the Board of Supervisors approved a new location for the Public Defender at 563-7th Street, a facility to be shared with the Office of Civilian Complaints and the Rehabilitation Office of the Sheriff's Department.

Our work can now be done with dignity. Our clients can be interviewed in private. Our employees will work in safe quarters.

ANNUAL REPORT

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

FISCAL YEAR 1985-1986

JEFF BROWN
PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

INTRODUCTION

This Annual Report is a statement of the work of the Public Defender's Office. It is a description of the jurisdiction of the office and a record of the expenditures, programs, program costs, and performance objectives for this department of city government.

The Public Defender represents people charged with crimes who do not have money to hire their own lawyers. Twenty thousand such people are represented every year. To carry out that responsibility, the Public Defender has a staff of 69 lawyers and 40 support personnel.

The Public Defender is responsible for seeing that each client is fully and competently represented. This requires the Public Defender to provide each client with a defense that works to the maximum legal advantage of that client. Whatever the Public Defender's status as a public officer, the Public Defender's primary duty and loyalty is to the client, no matter how grievous the charges and no matter how strong the evidence against that person.

The San Francisco Public Defender is elected: one of the few in this country. With that status comes certain responsibilities. First, as an elected official, the Public Defender is accountable to the public in terms of the quality of his/her administration. The public has a right to know the level of expertise, the nature of the Public Defender's hiring,

the efficiency of the office, the level of integrity, and honesty.

Second, as an elected official, the Public Defender has the duty to articulate the concerns he has about the overall quality of justice within the system. The elected Public Defender has a duty to be more than a passive player within the system. He or she must speak up as injustices occur either the working of the judicial system or in the legislative process. In that sense the Public Defender must be a leader of public opinion.

Third, the elected Public Defender has a duty to protect the indigent defense system against negative public opinion or politically-motivated action. The Public Defender must never succumb to the temptation to put the interests of public opinion, or his or her own popularity, over the interests of the client.

Throughout this detailed report, we hope the reader keeps in mind the principal concern of this department: that every client receive the highest quality of representation. The task of every employee, whether department head or telephone operator, is to ask this question--"is there anything more, within reason, we could do for the man or woman who uses our services?"

The task of representing clients in this office involves much more than preparing a case and going to court. The

task involves a delivery system where coordination and management are critical. There are 107 employees, and the proper and efficient distribution of work assignments for each person is essential. In order to meet the demand of effectively representing each client's case, an administrative structure exists within which workload is distributed and work performance is closely supervised. A series of goals and objectives has been developed for the organization of the office. The goals address all activities of the office, and the objectives relate to all areas of supervision and management.

Each goal is a broad, organizing principle for action and for reflection about the work and about the conduct of the office. Each objective is a specific target which is measured four times a year.

The objectives have two functions:

1. To insure that the day-to-day work of each section of the office is being done (output objective)
2. To improve the quality of that work (performance improvement objective)

An example of a goal would be: "To insure the highest quality of representation." An example of an objective would be: "To handle 2,000 felony cases this year" (output) or "to reduce state prison sentence" (performance improvement).

This Annual Report will be divided into discussion of each of the programs. The Report will describe the program costs, program objectives, and will explain how each of the objectives is measured. As a result, the reader will see the successes and shortcomings of the department. We also make specific recommendations for change.

OVERALL OFFICE GOALS

The overall goals of the office are:

1. To insure that each defendant receives competent and zealous representation
2. To maintain the highest professional and ethical standards on the part of each employee of the department
3. To insure that the delivery of legal services be as economical as possible without sacrificing the quality of those services
4. To maintain public respect for the public defender and the criminal justice system

Everything that is done in the Public Defender's Office is designed to bring about these goals. Every objective is a restatement of practical ways to achieve these goals.

I. JURISDICTION

Section 33 of the Charter:

> [The Public Defender] shall immediately, upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give advice to a person charged with the commission of a crime.

The Public Defender is a creature of the Charter of the City and County of San Francisco. The Charter provides that the Public Defender will represent persons who have been charged with criminal offenses and who are without funds to pay for a privately-retained lawyer.[1/]

In addition to this specific grant of power by the Charter, the California Government Code also authorizes counties, such as San Francisco, to establish public defender offices.[2/] The Government Code sets forth the types of cases which can be handled by a County Public Defender. These include:[3/]

(1) Criminal cases upon request of the defendant or by appointment of the court;

(2) Contempt cases;

(3) Appeals;

(4) Actions for the collection of wages or other demands against a person for under one hundred dollars;

1/ Charter Section 33

2/ Government Code Section 27706

3/ Ibid.

(5) Defense of individuals in civil litigation where a person is being harassed or persecuted;

(6) Cases involving mental health guardianships and conservatorships;[4]

(7) Juvenile cases.

The Welfare and Institutions Code also provides for the appointment of attorneys for indigent parents whose custody rights to their children are being subjected to proceedings for suspension or for termination of those rights.[5]

The law, thus, provides for public defender representation in a wide spectrum of activities. Although the great bulk of the office's activities are in the criminal courts, the office is also quite active in representing persons in mental health and in juvenile cases.

II. OFFICE STRUCTURE, STAFF, BUDGET, AND WORKLOAD

1. Office Structure

The executive officer of the Public Defender's Office is the Public Defender. The Public Defender is elected every four years. The Public Defender appoints all Deputy Public Defenders

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[4] Probate Code Section 1471 also provides for public defender appointment in probate guardianships under specified conditions.

[5] Sections 634 and 317 of the Welfare and Institutions Code.

and a Confidential Secretary.[6/] These employees serve at the pleasure of the Public Defender. The balance of the staff, which includes investigators, secretarial, and other support personnel, are selected through Civil Service rules.

The Chief Attorney is the second executive officer of the department. The Chief Attorney is the person to whom all other supervisors directly report. The Chief Attorney is Acting Public Defender should the former leave the state.

There are six administrative units in the Public Defender's Office. Five of these six relate directly to legal representation and are under the direction of supervising attorneys. These include:

(1) Misdemeanor Unit: 16 attorneys in 6 Municipal Courts.

(2) Felony Unit: 33 attorneys in both the Municipal Court (Felony Division) and in the Superior Court.

(3) Mental Health Unit: 5 attorneys, 2 investigators, and a secretary.

(4) Juvenile Unit: 8 attorneys, 1 investigator, 2 social workers, 3 clerical-secretarial personnel.

(5) Research Unit: 2 attorneys and 1 paralegal.

(6) Investigative Unit: 1 head attorney, as supervisor; 10 investigators; 1 clerk.

(7) Administrative Unit: 1 executive assistant; 1 accounts coordinator.

6/ Charter Section 3.47

2. Staff

A breakdown of the Office by class and job title is:

Attorneys	69
Investigators	12
Executive Assistant	1
Fiscal/Budget Coordinator	1
Legal Steno	3
Secretary I	2
Junior Clerk	1
Senior Clerk Typist	2
Clerk Typist	2
Telephone Operator	2
Senior Legal Process Clerk	2
Legal Process Clerk	7
Legal Assistants	3
	107

TABLE A

Cost Breakdown

	(85-86)	(86-87)
Salaries	$4,528,389.00	$4,497,519.00
Fringes	1,076,486.00	1,063,222.00
Salaries & Fringes Subtotal	$5,604,875.00	$5,560,741.00
Expert Witness	$ 155,000.00	155,000.00
Contracted Services	37,000.00	37,000.00
Travel	800.00	600.00
Other Services	192,020.00	90,000.00
Material and Supplies	20,218.00	20,218.00
Membership dues	200.00	200.00
Rental of Property	241,172.00	445,800.00
Equipment Purchase	21,900.00	4,000.00
Equipment Lease/Purchase	91,100.00	.00
Police Dept. (use of Wang Word Proc.)	112,575.00	112,575.00
Electricity	62.00	70,230.00
Real Estate	17,500.00	5,275.00
Central Shop	16,400.00	16,400.00
Management Training	1,500.00	610.00
Juvenile Court	16,788.00	16,788.00
Reproduction	1,500.00	1,500.00
Subtotal	$ 926,795.00	$ 976,196.00
Total Costs	$6,531,670.00	$6,536,937.00

3. Budget

Table B sets forth the rise in the Public Defender budgets from FY 78-79 to the present. Before FY 82-83, a large portion of the salary costs for personnel was borne by federal programs. With the Federal Government's elimination of the Comprehensive Emergency Training Act (CETA) and with the further Federal cut-back of Title II Community Development money, the City and County virtually absorbed the cost of Public Defender's Office, causing a rise in the City's portion of this budget. Since FY 82-83, the rise has reflected only those cost increases mandated by the city charter. In FY 86-87, we anticipate a sharp rise due to charter mandated costs and to the cost of renting new premises.

TABLE B

Comparative Budgets 1978-79

	78-79	80-81	81-82	82-83	83-84	84-85	85-86	86-87
Ad Valorem	2,201,463	2,207,211	2,938,032	4,415,465	5,026,091	5,896,139	6,513,822	6,536,937
C.E.T.A.	Not avail.	528,892	416,125	---	---			
Title II (Community Development)	---	162,076	206,573	---	---			
A.B. 90	66,000	73,739	52,751	71,000	73,000	83,803	91,403	91,403
Total	Not avail.	2,971,918	3,613,481	4,486,465	5,099,091	5,979,942	6,605,225	6,628,340

4. Program Costs

Table C represents a salary cost for each program or each administrative unit within the Public Defender's Office.

TABLE C

Public Defender, Chief Attorney and Administration	$ 209,571.00
	463,926.00
	673,497.00
Felony	2,308,249.00
Misdemeanor	801,891.00
Mental Health	431,612.00
Juvenile	638,437.00
Research	209,376.00
Investigation	479,536.00
	$5,542,598.00

5. Summary of Caseload	FY 83-84	FY 84-85
Felonies		
Superior Court	1,493	1,338
Municipal Court	4,152	4,256
	5,645	5,594
Less cases held to answer or certified:	1,434	1,073
Total:	4,211	4,521
Misdemeanor	7,777	9,158
Juvenile Cases		
Juveniles	2,211	2,010
Adults	395	522
	2,606	2,532
Mental Health		
	4,052	4,100
	18,438	20,524

6. Comparison of Caseload

The following is a breakdown of the Public Defender caseload for a six-year period.

	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86
Felony	5,329	5,346	5,450	5,963	5,769	4,211	4,521	5,480
Misdemeanor	12,855	9,654	10,431	11,762	9,593	7,569	9,158	10,630
Mental Health	2,601	1,470	1,381	1,054	3,080	4,052	4,100	3,546
Juvenile	2,040	2,895	2,418	2,598	2,626	2,606	2,532	2,796
Total	22,825	19,365	19,680	21,377	21,068	18,438	20,311	22,452

III. EXECUTIVE OFFICERS - PUBLIC DEFENDER AND CHIEF ASSISTANT

Program Cost: $209,571

Program Goals:

1. To provide overall leadership
2. To supervise the expenditure of money and use of resources
3. To supervise the Head Attorneys in their management of attorneys and caseloads
4. To develop policies and procedures
5. To make appointments for discretionary and civil service position
6. To evaluate the implementation of all office policies and duties
7. To maintain contacts with other City and State agencies that affect the work of the Public Defender
8. To provide public education about the work of the Public Defender and the work of the criminal justice system
9. To insure a high ethical standard in the performance of Public Defender duties

With the elected official who is Public Defender, the "buck stops here." The ultimate responsibility for the entire operation is upon the person of the Public Defender. As such, the Public Defender must clearly define the duties and the goals of the department and see that these are carried out.

The Chief Attorney is the chief executive officer who assists the Public Defender in the development of policies and procedures. In addition, the Chief Attorney has direct responsibility for the execution of those policies and proceedings. The Chief Attorney is the link between policy making and the line work of the office.

A major part of the Public Defender's function is to lobby the Mayor and the Board of Supervisors for the budgetary needs of the office. The Public Defender must develop the office budget and must work to see that the budget is approved.

The Public Defender also must educate the public at large about the function of the defense attorney in the criminal justice system. A large amount of the Public Defender's time is spent answering inquiries about critical issues which affect the criminal justice system. It is an understatement to say that those issues, whether they relate to drunk driving, or to child abuse, or to the decisions of the California Supreme Court, are matters of passionate debate.

The Public Defender must have the courage to enter that public debate and must provide an informed view, no matter how unpopular that view may be. As the National Legal Aid and Defender Commentary to Standard 3.5 put it:

> . . . (the director of a defense system) has a duty in terms of public education which, if he fulfills it, will need to give him the kind of support that can be expected to arise out of the more decent instincts of

> citizens of a society dedicated to democracy and fair play. If he will approach the community, not as an apologist for his performance, but as an interpreter and reinterpreter of a free society's own mandates concerning its constitutional guarantees; if he will approach this giant jury with the same skill that it is hoped that he approaches a petit jury, he will not only give strength to the foundations and structure of his own office but will do much to enhance that of the judicial process as a whole.

IV. ADMINISTRATION

Program Cost: $463,926

Program Goals:

1. To provide clerical, secretarial services for the office
2. To provide data collection
3. To prepare payroll and process the expenditures for office

The Administrative Unit is managed by Sharon Christensen, the Executive Assistant. The Unit consists of five components:

1. Word Processing (2 legal stenos, 2 transcribers, 1 clerk steno)
2. Senior Legal Process Clerks (2 persons)
3. Legal Process Clerks (7 persons)
4. Accountant
5. Reception Area Workers (2 telephone operators, 1 receptionist)
6. Court Alternative Specialist (2 persons)

The work of these support personnel is critical to the operation of the Public Defender's Office. Without them, the lawyers could not function. Just as important, the Administrative Unit personnel provide an environment for the clientele and the public. If phones are answered, if documents are produced in a timely fashion, if the public is treated with courtesy, the work of the office will improve. If people are impressed that support personnel can effectively handle their questions and problems, the public will view the Public Defender's Office as a resource, not just another bureaucracy. As public attitude and funding correspond to the performance of the office, so the morale of the employees of the office corresponds to the public attitude. Good morale equals high performance--an equation that yields a net positive to the city and the Public Defender's Office.

V. FELONY UNIT

Program Cost: $2,308,249

Program Goals:

1. To provide effective legal assistance in all felony cases in the Municipal and Superior Courts
2. To decrease the number of cases where the client is held to answer for a felony
3. To decrease the number and length of state prison sentences
4. To reduce felony conflicts

The Felony Unit consists of 33 attorneys. The unit handles over 4,000 felony cases in the Municipal and Superior Court. It is supervised by two Head Trial Attorneys, Robert Berman and James Pagano.

The work of the attorneys in this unit begins in the Municipal Court, where a felony defendant is arraigned on a charge. The court makes a determination whether the individual defendant can afford his/her own attorney; and if he/she cannot, the court will appoint a Public Defender. The Public Defender will then make appropriate bail/O.R. motions and set a date for a preliminary hearing. At the preliminary hearing, the prosecution will attempt to show that there is enough evidence to hold the defendant to answer in a trial to be held later in the Superior Court.

The San Francisco Public Defender's Office is uncommon in its handling of felony cases. The independence of the office gives it the freedom to employ a "vertical representation system" in defending its clients. This means that the same lawyer represents the client throughout legal proceedings in both the Municipal and Superior Courts. The value of this system lies in its humanness and consistency. Defendants are not passed from attorney to attorney like so much baggage, but receive personal and individual attention and service from the same attorney at all phases of the process.

Vertical representation insures the consistent handling of the defendant's case throughout the life of the case. It makes the attorney fully accountable to the client for all decisions and actions on the client's behalf. This accountability is an incentive for the attorney to give his or her best efforts toward the client's cause.

The alternative process of "horizontal representation" leads to buck passing and impersonal legal representation, because the client has a different attorney in every phase of the case. In a "horizontal" system, the Public Defender emphasizes the processing, not defending, clients. It is a system that serves the court and the courts' preoccupation with the calendar.

Table D represents the workload and the disposition of cases of the Felony Unit in FYs 1982-83 and 1984-85.

TABLE D

Public Defender Felony Cases

Municipal Court Felonies

Fiscal Year	82-83	83-84	84-85	85-86
Arraigned	4,152	5,175	4,256	4,649
Held to Answer	918	815	913	659
Certified Pleas	530	533	446	645

Activity and Disposition of Superior Court Cases

a. Case Activity				
Motions to Revoke	459	434	1,000	831
Certifications	522	530	446	870
Sentences	1,753	1,528	1,338	1,540
b. Case Disposition				
State Prison	479	490	524	470
Probation	1,079	815	549	831
Dismissals	193	198	233	218
Other	181	25	32	24
c. Trial Activity				
Total Cases				
Guilty Verdict	109	n/a	98	80
Acquittals	23	n/a	15	25
Hung Juries	11	n/a	26	19

These are several points that should be emphasized by those statistics:

1. State Prison Commitments Remain High

Approximately 35% of Superior Court sentences now carry a prison term. The phenomenon that we notice with our own cases is also true of private attorneys and community defenders. It is also true of Superior Court cases outside of San Francisco.

Since 1980 and particularly since the passage of Proposition 8 in 1982, the overall state trend in state prison sentences has been upward. Sentences are steeper, judges more severe, the procedures changed to favor the prosecution. The result is that criminal defendants are much likely to go to state prison whether they plead guilty or whether they go to trial. Take this example:

> Defendant is charged with burglary. He has three prior residential burglaries. His maximum exposure is 21 years--6 for the present offense, 15 for the priors.

The defendant can go to trial, be convicted, and face up to 21 years. In the alternative, he can plead pursuant to a plea bargain. Because the prosecutor has considerable leverage (in view of the maximum penalty), a defendant will trade a shorter state prison sentence in order to avoid the maximum sentence. A few years ago when this same offense carries a maximum of nine years, he might be willing to hold out for a county jail sentence.

Perhaps, the only point of consolation is that the number of state prison sentences in San Francisco have remained relatively stable since 1981. Throughout in California, there has been a continuous growth in the number of state prison commitments.

TABLE E

State Prison Commitments

1. Persons

	San Francisco	California
1979	525	9,874
1980	593	11,347
1981	841	13,932
1982	724	15,932
1983	634	18,398
1984	646	17,602
1985	780	

Source: (California Department of Corrections)

2. Cases

	San Francisco	California
1979	517	8,878
1980	467	10,311
1981	795	13,971
1982	759	25,122
1983	756	16,677
1984	841	18,094
1985	938	21,421

Source: (Adult Felony Dispositions: Department of Justice)

3. Prison Commitments per 100 convictions

Six months Ending	State	Quarter Ending	State
6-12/31/77	29%	3/31/84	40%
1-6/30/78	33%	6/30/84	41%
7-12/31/78	34%		
1-6/30/79	34%		
7-12/31/79	34%		
1-6/30/80	35%		
6-12/31/80	36%		
1-6/30/81	37%		

Source: (Judicial Council)

4. Public Defender Cases -- Commitments To State Prison

78-79	402	83-84	490
79-80	390	84-85	524
80-81	538	85-86	420
82-83	479		

2. There Has Been A Noticeable Change In The Way Plea Bargaining Is Conducted

As our status indicate, a high percentage of felony pleas occur at the Municipal Court level. We call these certified pleas--pleas are taken by a Municipal Court judge and certified to the Superior Court.

In other annual reports, we have written of our distress with this process. We know that pleas taken so early in the process are more likely to be done without full investigation and consideration of the merits of the case. However, there are reasons why certified pleas have become such a prominent part of criminal law practice.

For one thing, the penalties associated with felony cases are so serious that district attorneys can offer a reduction in potential sentences in exchange with an early plea.

For another, Proposition 8 restricts and discourages plea bargaining in the Superior Court. In many cases, the Municipal Court is the only forum for the negotiation and acceptance of a plea of guilty.

3. There Is An Increase In The Number Of Jury Trials

In recent years, we, in the Public Defender's Office, have made it a policy to fight cases in the face of severe penalties.

An office that fails to try its share of cases is an office that has lost the will to fight for the client. It is an office that lacks credibility, because the prosecution knows that its

attorneys will "roll over" rather than hold out for the client's interests. This does not mean that individual attorneys should elect to go to trial in cases where the evidence against the client are great, and where a plea bargain would lessen the exposure to a more severe sentence. But it does mean that a trial must be held if a prosecutor fails to create a substantial incentive to engage in a plea agreement.

VI. MISDEMEANOR UNIT

Program Cost: $2,308,249

Program Goals:

1. To represent indigent defendants in misdemeanor cases in the Municipal Court
2. To limit the number of misdemeanor convictions
3. To try as many misdemeanor cases as is necessary to protect the interests of the clients

The Misdemeanor Unit consists of 19 lawyers. It is supervised by Head Trial Attorney Daro Inouye. The Unit handles cases in six departments of the Municipal Court. As such, it carries a tremendous caseload--roughly 10,000 cases a year.

Misdemeanor offenses carry a maximum sentence of six months or a year in the county jail and a fine of between $500 and $1,000, depending on the charge.

The misdemeanor courts deal with an enormous variety of offenses--from public drunkenness to auto burglaries and aggravated assaults. Table F indicates the work of the court.

TABLE F

Misdemeanor Unit Cases

	83-84	84-85	85-86
Misd. Cases	7,165	9,158	9,614
Motion to Revoke	612	802	1,024
	7,777	9,960	10,638

The increase this year reflects a sharp increase in the number of misdemeanor filings in the first six months of 1985 (see Appendix A). And that, of course, was caused by a sharp increase in felony and misdemeanor arrests.

A matter of particular concern is the number of jury trials. Large-scale defense operations can develop a "cop-out" mentality ever goes to trial. The routine of plea bargaining becomes almost mesmerizing, and jury trials become a departure from that routine. The net effect is that jury trials decline as an institution, because lawyers and judges are too lazy or too afraid to make the additional effort of preparation for the trial.

Table indicates the jury trial activity over the past seven years.

	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86
	87	85	135	78	92	80	91	96
Convicted	n/a	37	58	38	42	-	56	58
Acquitted	n/a	30	38	26	40	-	20	19
Hung Mis.	n/a	18	39	14	12	-	15	19

The most important result for an attorney in criminal cases is the dismissal of his/her client's case. Over the many years,

the number of cases thrown out by the District Attorney or the court is high--it has ranged from 35-40% in the misdemeanor area. A high percentage are dismissals after a plea of not guilty is entered. A portion of the dismissals result when defense and prosecution agree to defer prosecution and, instead, have the defendant divert from the criminal justice system for a specified period. If the defendant completes a period of community service work and stays out of trouble, the court enters a dismissal.

Table G sets out the pattern of dismissals and diversions since FY 78-79.

TABLE G

Fiscal Year Comparisons - Misdemeanor Unit

	New Cases	Dismissals	Diversions
85-86	9,164	2,080	962
84-85	9,158	2,165	967
83-84			
82-83	8,375	2,522	1,483
81-82	9,826	2,473	2,137
80-81	8,622	3,404	1,198
79-80	8,395	3,433	577
78-79	12,136	Not av.	Not av.

VI. JUVENILE UNIT

Program Cost: $638,437

Program Goals:

1. To represent juveniles in delinquency cases and in cases where the District Attorney seeks to exclude juveniles from the juvenile justice system
2. To represent adults whose parental rights are being suspended or terminated

The Public Defender's Office represents juvenile clients in the Juvenile Court at the Youth Guidance Center. The juvenile court unit of the office has a staff of seven attorneys, one investigator, two social workers, and three secretaries. The unit is supervised by Head Trial Attorney Joseph L. Spaeth.

Most of the Public Defender juvenile clients are charged with having committed offenses which, if the juveniles were adults, would be crimes. In these proceedings, the District Attorney files a petition pursuant to Section 602 of the Welfare and Institutions Code. The case is later heard before a referee or before a Superior Court judge.

The Public Defender also represents other juveniles who are alleged to have behavior problems. These juveniles are not charged with committing any acts which would be criminal in adult courts. Typically, these are children who are charged with truancy, with curfew violations, or with being beyond parental control. These are called "status" offenders.

Petitions pursuant to Section 601 of the Welfare and Institutions Code are filed in these cases. If these petitions are granted, the child is taken from the control of his or her parents.

In certain criminal-type cases, the District Attorney will attempt to exclude a juvenile from the juvenile court process and to have the juvenile prosecuted as an adult in an adult criminal court (pursuant to Section 707, et seq., Welfare and Institutions Code). Before that action is taken, the juvenile receives a hearing on whether or not it is proper to have the juvenile tried as an adult.

The Public Defender also represents parents in Juvenile Court, where the Department of Social Services attempts to suspend or to terminate the parents' custody over their children.

The Public Defender must be a forceful and a zealous advocate for the protection of the rights of the juvenile. Juvenile cases are adversary proceedings, and the attorney must use all of his talents in presenting the factual and the legal defenses on behalf of the juvenile client. At the same time, the Public Defender must also be sensitive to the special problems confronting a juvenile offender. Attorneys in the juvenile courts must be able to identify emotional and educational difficulties and to explore the alternatives which exist outside of the legal system. The lawyers must utilize fully all of the community-based agencies which provide social or psychiatric assistance.

TABLE H

Juvenile Statistics

Fiscal Year Comparisons

1. Caseloads--Public Defender

	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86
601	127	141	145	130	89	30	66	--
602	2,119	1,410	2,118	2,470	2,217	2,181	1,944	1,927
707	NA	19	15	12	8	0	5	2
300	225	325	197	202	320	39	522	869
Total	2,471	1,895	2,475	2,823	2,634	2,250	2,537	2,798

2. Commitments to CYA--Public Defender Cases

78-79	96	82-83	65
79-80	81	83-84	86*
80-81	89	84-85	31
81-82	90	85-86	36

3. Commitments to Log Cabin--Public Defender Cases

79-80	136	82-83	103
80-81	95	83-84	113*
81-82	102	84-85	128
		85-86	130

All cases--P.D. and non-P.D. cases.

MBO OBJECTIVES

1. To represent juveniles in at least 2,200 cases petitioned under Sections 601, 602, and 707 W&I Code and 300 adults in Section 300 W&I Code proceedings

Our statistical findings parallel those of the Department of Justice and the Judicial Council (see Table P):

TABLE P

Juvenile Court Caseloads and Filing (All Cases)

1. Department of Justice: Active Juvenile Probation Caseload 1972-81

1972 - 1,997	1979 - 1,333
1973 - 1,956	1980 - 1,313
1974 - 2,004	1981 - 1,259
1975 - 1,940	1982 - 1,385
1976 - 1,837	1983 - 1,348
1977 - 1,144	1984 - 1,208
1978 - 1,119	1985 - 1,291

2. Judicial Council Reports: Juvenile Court Filing

	76-77	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85
Total Filings	2,355	2,017	2,130	2,116	1,933	2,295	2,356	2,158	1,982
Original Filings	1,597	1,484	1,467	1,426	1,178	1,388	1,128	1,278	1,533
Subsequent Filings	758	533	653	690	755	907	1,030	1,078	449
Contested Matters	480	437	516	621	556	530	305	270	235
601 W&I	209	172	93	132	119	87	49	71	16
602 W&I	2,098	1,815	2,026	1,979	1,456	1,301	1,254	1,083	1,518

According to Tables O and P, the caseload at Juvenile Court has not changed dramatically since FY 78-79. The most remarkable feature of these statistics is the decline of 601 W&I cases and the increase of 300 W&I cases--patterns which are likely to stay in effect.

It is our opinion that petitions against adults regarding termination of parental rights will remain high for the foreseeable future. There are two factors influencing this increase of workload:

(1) S.B. 14 which mandates hearings on a six-month basis;

(2) The increase of staff by the Department of Social Services (D.S.S) and the City Attorney to bring these petitions against allegedly inadequate parents. The City Attorney has six to eight attorneys assigned full time to this work, in addition to a full-time supervisor. The City Attorney also has the use of five D.S.S. court officers to investigate and to prepare these cases. Arrayed against this are three deputy public defenders.

2. <u>To utilize social work in at least 225 delinquency cases</u>

The Juvenile Unit employs two full-time social workers. They interview clients, render evaluation, and provide dispositional plans. They do this work in 601, 602, and 707 W&I cases. Their work has been successful in reducing log

cabin and CYA commitments and in persuading the court not to exclude the juvenile from the juvenile system.

The Public Defender social workers have an important advantage: the information is conveyed within the setting and the protection of the lawyer-client relationship. Thus, the client and the client's relatives are more likely to speak candidly about their problems. Accordingly, the social worker is better able to make an accurate diagnosis and an appropriate plan for treatment or assistance.

Last year, we utilized social work staff in a total of 302 cases. We thereby exceeded our MBO objective, and we have adjusted our target upward to 350.

3. <u>To involve community-based agency participation in at least 350 cases</u>

There exists a rich network of community-based agencies, many existing on private funding, others on public and quasi-public funding. They have trained counselors and instructors and they serve specialized clientele; i.e., Hispanic youth in the Mission by "Real Alternatives." Currently, the office makes good use of these programs; the office will continue to increase its involvement with these groups.

The use of these agencies is a healthy alternative to incarceration in juvenile hall, log cabin, or CYA. These agencies provide guidance in educational, emotional, and behavioral problems for young people; whereas custody hardens

young people, isolates from the mainstream, and tends to criminalize them.

This year, the Juvenile Court utilized community-based agencies in 446 cases--greatly exceeding the MBO target of 350.

4. To limit the number of 707 W&I certifications to 10

The exclusion of the juvenile offender from the juvenile justice system is a drastic step. It means that the youth is punishable in the same way that an adult is and can suffer the state prison sentences for lengthy terms.

A youth charged with certain crimes, like murder, robbery, rape, will be presumed to be unfit for the juvenile justice system. These crimes are listed in Section 707b. Youth who are charged with all other offenses, not set forth in Section 707b, are not presumed; and the burden is on the prosecutor to establish unfitness.

The Public Defender has made every effort to keep youth charged with crimes, even serious crimes, within the juvenile justice system.

We feel that rarely, if ever, are youthful offenders "helped" by adult punishment or deterred from further criminality. The youth is merely hardened or criminalized further by exposure to the world of the adult offender. We feel, too, that adult treatment is never really carried out--the juvenile remains largely isolated from adults and held in

separate facilities--whether in the county jail or state prison. And there is a final irony: most of those excluded from the juvenile court end up going to the California Youth Authority after being tried and sentenced as an adult.

Fortunately, we held the total number of 707 W&I exclusions in FY 85-86 down to just two cases.

VII. MENTAL HEALTH UNIT

Program Cost: $431,612

Program Goals:

1. To represent those alleged to be mentally ill in conservatorship proceedings
2. To represent the retarded in progress related to their treatment and placement
3. To represent the insane in proceedings for the restoration of their sanity

The Public Defender is the principal attorney in the community for the mentally ill. Most of the work of the Mental Health Unit is done in the defense of petitions to establish mental health conservatorships pursuant to Section 5500 of the Welfare and Institutions Code. This conservatorship petition is the legal procedure for establishing judicial control over a person who is alleged to be a danger to himself or others or who is gravely disabled to the extent of lacking the ability to provide food, shelter, and care for himself/herself. If the

petition is granted, an individual may be placed in a state hospital or in a local facility, whichever the Court deems appropriate.

In these cases, the Public Defender is appointed to represent the proposed conservatee. As the attorney for the proposed conservatee, the Public Defender must review the medical reports, witnesses, and explore alternative placement if the client contests the hearing.

The Mental Health Unit also represents mentally-ill clients who have been sent to state hospitals. These involve conservatees committed under Section 5500 of the Welfare and Institutions Code who have a right to periodic review of their status and their treatment, clients who have been found incompetent to stand trial under Sections 1368-70 of the Penal Code, those who have been found not guilty by reason of insanity under Section 1027 of the Penal Code, mentally disordered sex offenders pursuant to Section 6300 of the Welfare and Institutions Code, and mentally retarded dangerous persons under Section 6500 of the Welfare and Institutions Code.

These clients must be regularly visited and interviewed. If the state hospital makes an inappropriate recommendation for a patient, the Public Defender must bring that fact to the attention of the court. If it is necessary, a jury trial may be held to determine whether or not a person should be kept in a state hospital or whether or not his/her parole should be revoked.

TABLE I

Summary of Mental Health Unit's Work

Statistics Fiscal Year 1985-86

Probable Cause Hearings			2,517
New LPS Conservatorships	Granted	278	
	Denied	569	
Continuance Appearances		740	
Total Appearances		1,587	
TOTAL CASES			847
Renewal LPS Petitions	Granted	390	
	Denied	222	
Continuance Appearances		350	
Total Appearances		962	
TOTAL CASES			612
Med Consent Hearings (LPS)			40
ECT Hearings			19
Rehearings on Status	Released	21	
	Denied	43	
	Withdrawn	35	
TOTAL CASES			99
Habeas Corpus Writs	Granted	13	
Withdrawn (patient released)		68	
	Denied	44	
TOTAL CASES			118
Post Certification Petitions	Granted	7	
	Denied	6	
Appearances		16	
Total Appearances		29	
TOTAL CASES			14
Placement Hearings		35	
Continuances		23	
Total Appearances		58	
TOTAL CASES			35
Status and Progress Reports		28	
TOTAL CASES			28

Special Motions (Law & Motion)			5
6500 Petitions	Granted	5	
	Denied	2	
TOTAL CASES			7
Jury Trials (Civil)	Requested	18	
	Tried	11	
TOTAL CIVIL JURY TRIALS			11
TOTAL CIVIL CASES			4,352

PROBATE MATTERS

Probate 3200 Medical Consent Hearings	3	
Probate Conservatorships	1	
TOTAL PROBATE CASES		4

CRIMINAL CASES

P.C. 1026.5 trials	9	
P.C. 1026.2	26	
P.C. 1611 hearings	3	
P.C. 1608	1	
Jury trials	2	
Appeals	1	
Special Motions Criminal Cases	1	
TOTAL CRIMINAL CASES		41
TOTAL MENTAL HEALTH UNIT CASES		4,397

VIII. RESEARCH UNIT

Program Cost: 209,376

Program Goals:

1. To prepare writs and appeals, legal memoranda in complex cases
2. To provide research for cases in litigation
3. To provide technical assistance in writs and appeals

The newest administrative component of the Public Defender's Office is the Research Unit. It is located in the Public Defender library. One Head Trial Attorney, Grace L. Suarez; another attorney; and one paralegal work there. The unit writes briefs, writs and appeals, researches the law for cases in trial, and provides technical assistance to attorneys in the preparation and filing of pleadings.

The unit has a small library. It has an indexed brief bank and a microfiche file containing cases of the State Public Defender. The unit also has a Westlaw terminal to perform computerized leagl research.

The unit has the use of two Wang Word processors which generate work rapidly.

The value of the unit cannot be overstated. It generates an average of 18 documents a month, including petitions for writs, appellate briefs, and trial motions. Not included are the many questions handled orally and the ongoing technical assistance provided to lawyers in trial. This can include

anything from performing a Westlaw search for an attorney about to argue a motion to drafting special jury instructions.

The unit's staff constantly maintains and updates a brief bank containing several hundred documents. They are indexed on the Wang word processor for easy retrieval. In addition, a library of forms, kept online on the Wang system, provides attorneys with up-to-date, technically-correct documents.

Although the library is quite small, it contains updated practice books and materials from recent lectures, making it an efficient research tool. Maintaining the library and brief bank occupies a substantial portion of staff time.

The unit produces a monthly bulletin citing and summarizing appellate decisions and issues memos as needed on important cases and new laws.

The work of the unit enhances the quality of the trial attorney's representation. The harried trial practitioner can still submit a well-researched and drafted motion and seek pretrial writ relief within hours of the motion's denial. The attorney can keep up with the torrent of new cases published every year and can feel confident that the advice he gives is based upon an understanding of the most current law.

IX. INVESTIGATION UNIT

Program Cost: $479,536

Program Goals:

1. To obtain information about the facts and circumstances regarding the cases of the individual clients represented by the Public Defender
2. To provide necessary support services to attorneys in furtherance of the representation of those cases

The Investigative Unit consists of a Head Trial Attorney, Gordon H. Armstrong, who supervises the unit, 12 investigators, and one paralegal. The unit carries out investigation for the Felony and for the Misdemeanor Unit.

An investigator starts working on a case when an attorney makes a written request. The request may ask that a witness be located and interviewed, that the crime scene be photographed, and/or that a document be located. A suspense date is set for the completion of the investigation. Supplementary requests may be made. The same investigator will be assigned to the case throughout the life of the case.

Solid and competent investigation is absolutely essential to effective representation. It can literally win the case for the lawyer. It can provide the exculpatory evidence which proves a client's innocence. It can find those facts which contradict the prosecutor's case.

Offices simply cannot afford to neglect adequate and professionalized defense services. As the 1976 Commission on Defense Services stated:

> Criminal investigation is an essential element of criminal defense. Offices lacking adequate investigative staff tend to neglect the investigative function and rely on the state's version of witness statements and other evidence. It is not cost-effective for lawyers to do all of the investigation connected with a case. Moreover, where lawyers conduct investigations, it may be necessary to have an investigator along to refute charges of impropriety and to have a witness who can testify at trial if necessary.
>
> Secondly, since investigation is increasingly becoming a professional skill requiring professional expertise, investigators should be hired who have the professional skills required. Professional investigators greatly improve the overall quality of service in a defender office.
>
> In order to ensure that investigations are conducted in every case where there is a factual question not subject to objective determination, an adequate attorney-investigator ratio is necessary. At least one investigator should be employed for every three staff attorneys. This figure is based upon the experience of defenders from coast to coast. (At p. 333.)

This year, the Investigative Unit completed 1,780 investigations.

The Investigative Unit experienced the selection of ten investigators through the Civil Service. At last, the temporary status was ended.

Conflicts

The Public Defender is required to represent all persons accused of crimes who do not have enough money for their counsel. However, cases arise where the Public Defender cannot represent an accused who does not have funds for his own counsel. For example, there may be more than one person charged in a case, and the Public Defender can only represent one person. In that case, the Public Defender declares a conflict-of-interest; and a separate, private attorney will be appointed. Conflicts can arise also where a public defender client becomes a witness against another public defender client. In that case, one or the other will have to have separate non-public defender counsel.

In certain cases, conflicts may declare in debatable circumstances. For instance, the Public Defender may have represented a witness in a current case years ago. It is questionable whether the Public Defender really has to get out of the case.

We have sought to limit declarations of conflict-of-interest to those situations required by law and ethics. In multiple defendant cases, we usually represent the "heaviest" defendant--the one whose case requires the most work.

Conflict costs are expensive. What is more, a Public Defender that shies away from serious cases by finding a far-fetched reason for a conflict does a disservice to his statutory responsibilities. The following table states the number of conflict cases, as well as the costs, over the last several years.

TABLE J

Conflict Cases

Conflict Costs

	Municipal Court	Superior Court	Total
1982-83	605,822	794,992	1,400,814
1983-84	600,719	840,201	1,440,920
1984-85	508,893	968,707	1,477,602
1985-86	1,064,647	1,080,848	2,145,495

Number of Conflict Cases

	Municipal Court	Superior Court
1982-83	2,096	1,111
1983-84	1,532	1,025
1984-85	1,432	787
1985-86	2,417	1,460

Volunteer Attorneys--Pillsbury, Madison and Sutro

For ten years, the Public Defender's Office has benefited from the volunteer participation of Pillsbury, Madison & Sutro. For stints of up to six months, an attorney from one of the nation's most prestigious firms works in our office handling felony cases. The quality of their work has been outstanding, reflecting the excellence and public spirit of their firm and themselves individually. We all owe a great vote of thanks to these fine lawyers.

Removal from the Hall of Justice

In 1978, Jeff Brown wrote every member of the San Francisco bar:

> "A law office cannot inspire the respect and confidence of its clients when the clients and their family, friends, and prospective witnesses must pass through a metal detector and be subject to search in order to confer with their attorneys.
>
> Minimum standards set forth by the National Advisory Commission on Criminal Justice Standards and Goals (Standard 13:13.2) mandate the removal of our law offices from the police-court complex. Our offices must be moved out of the Hall of Justice and into other available public facilities."

What this statement did not say was that the San Francisco Public Defender also had one of the congested, crowded, and unsanitary working conditions in city government. The office

space operated in violation of fire and OSHA regulations. As the American Bar Association sponsored report noted in 1979:

> "It may seem strange to begin a list of problems related to financing with the subject of office space. However, the offices of the Public Defender are so inadequate and appalling that probably no significant improvement in the overall quality of the program is possible until the space problem is remedied . . . .

More than 100 employees, more than 50 of them lawyers, are crowded into the Public Defender's approximately 5,500 square feet of space on the second floor. The average of 55 square feet per employee is less than recommended for modern detention facilities; and this does not take into account the hundreds of defendants, witnessses, and other visitors who come to the office daily." (Lefstein: Criminal Defense Services for the Poor, May 1982.)

After years of studies and frustrations, the Mayor and the Board of Supervisors approved a new location for the Public Defender at 555 - 7th Street--a facility to be shared with the Office of Civilian Complaints and the Sheriff's Parole Office.

Our work can now be done with dignity. Our clients can be interviewed in private. Our employees will work in safe quarters.

JB:cps
W9039D/2.87

APPENDIX A

Workload and Activity of Municipal and Superior Courts

CASES SET FOR PRELIMINARY HEARING

1-06-78	2,524
7-12-78	2,614
1-06-79	2,810
7-12-79	3,713
1-06-80	3,466
7-12-80	3,568
1-06-81	3,816
1-06-82	3,670
7-12-82	4,801
1-06-83	3,027
6-12-83	3,103
1-06-84	2,883
6-12-84	2,656
1-06-85	4,011
6-12-85	915
1-07-86	3,354
7-12-86	3,045

(Source: CMJ Computer)

FELONY ARRAIGNMENTS

1-06-78	1,269
7-12-78	1,283
1-06-79	1,337
7-12-79	1,208
1-06-80	1,464
7-12-80	1,434
1-06-81	1,820
7-12-81	1,428
1-06-82	1,097
7-12-82	1,023
1-06-83	966
6-12-83	1,039
1-06-84	989
6-12-84	988
1-06-85	951
6-12-85	903
7-01-86	1,137
7-12-86	825

(Source: CMJ Computer)

MISDEMEANOR ARRAIGNMENTS

1-06-78	16,745
7-12-78	15,830
1-06-79	14,533
7-12-79	12,587
1-06-80	13,432
7-12-80	13,565
1-06-81	13,727
7-12-81	14,955
1-06-82	14,402
7-12-82	13,560
1-06-83	10,224
6-12-83	9,517
1-06-84	10,086
6-12-84	8,578
1-06-85	11,260
6-12-85	11,502
1-07-86	11,302
7-12-86	11,095

(Source: CMJ Computer)

SUPERIOR COURT SENTENCES

1-06-77	1,381
7-12-77	1,226
1-06-78	1,305
7-12-78	1,520
1-06-79	1,467
7-12-79	1,372
1-06-80	1,552
7-12-80	1,428
1-06-81	1,587
7-12-81	1,610
1-06-82	1,559
7-12-82	1,748
1-06-83	1,828
6-12-83	1,531
1-06-84	1,811
6-12-84	1,634
1-06-85	2,114
6-12-85	2,257
1-07-86	2,413
7-12-86	2,518

(Source: CMJ Computer)

CERTIFIED PLEAS

1978-79	314	1-06-78	
1979-80	390	7-12-78	
1980	375	1-06-79	
1980-81	462	7-12-79	
1981	880	1-06-80	
1981-82	822	7-12-80	
1982	1,215	1-06-81	
1982-83	1,649	7-12-81	
1983	1,065		
1983-84	1,111		
1984	1,208		
1984-85	1,400		
1985	1,579		
1985-86	1,563		

(Source: Judicial Council)

FELONY ARRESTS

5,668	1-06-82	7,871	
5,439	7-12-82	8,192	
5,773	1-06-83	7,927	
6,022	7-12-83	8,171	
6,548	1-06-84	8,556	
8,063	7-12-84	9,320	
8,338	1-06-85	9,454	
8,336	7-12-85	7,170	
	1-07-86	8,829	
	7-12-86	8,728	

(Source: CMJ Computer)

APPENDIX B

Table I - Public Defender Cases Pending Superior Court for Trial

1983		1984		1985		1986	
1/3	160	1/1	186	1/16	232	1/1	208
1/15	164	1/15	163	2/1	236	2/1	230
2/15	166	2/16	187	2/16	225	2/16	263
3/1	165	3/16	218	3/1	227	3/1	296
3/15	147	4/16	218	3/15	210	4/1	285
4/4	150	6/1	190	4/16	197	4/19	259
4/21	169	6/16	182	5/1	213	4/21	254
5/1	178	7/1	177	5/16	206	4/28	246
5/15	170	7/16	173	7/16	160	5/2	236
6/1	160	8/1	193	8/1	147	5/12	247
6/19	155	8/16	191	9/1	128	5/19	207
7/1	158	8/31	204	10/1	178	5/26	192
7/16	152	9/16	217	10/15	185	6/2	184
8/1	166	10/16	190	11/1	201	6/9	200
9/1	187	11/1	210	11/16	191	6/15	200
9/15	210	11/16	230	12/1	193	8/16	172
10/1	174	11/16	199	12/16	194	8/25	164
10/15	218					9/1	159
11/1	187					9/15	161
11/16	204					9/23	167
12/1	205					9/30	167
12/15	189					10/10	202
						10/16	199
						11/2	206
						11/22	200
						12/1	196
						12/6	202
						12/13	197
						1/6	183

(Source: CMJ Computer)

ANNUAL REPORT

OFFICE OF THE PUBLIC DEFENDER

CITY AND COUNTY OF SAN FRANCISCO

FISCAL YEAR 1986-1987

JEFF BROWN
PUBLIC DEFENDER

PETER G. KEANE
CHIEF ATTORNEY

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INTRODUCTION

This Annual Report is a statement of the work of the Public Defender's Office. It is a description of the jurisdiction of the office and a record of the expenditures, programs, program costs, and performance objectives for this department of city government.

The Public Defender represents people charged with crimes who do not have money to hire their own lawyers. Twenty thousand such people are represented every year. To carry out that responsibility, the Public Defender has a staff of 69 lawyers and 38 support personnel.

The Public Defender is responsible for seeing that each client is fully and competently represented. This requires the Public Defender to provide each client with a defense that works to the maximum legal advantage of that client. Whatever the Public Defender's status as a public officer, the Public Defender's primary duty and loyalty is to the client, no matter how grievous the charges and no matter how strong the evidence against that person.

The San Francisco Public Defender is elected: one of the few in this country. With that status comes certain responsibilities. First, as an elected official, the Public Defender is accountable to the public in terms of the quality of his administration. The public has a right to know the level of expertise, the nature of the

Public Defender's hiring, the efficiency of the office, the level of integrity, and honesty.

Second, as an elected official, the Public Defender has the duty to articulate the concerns he has about the overall quality of justice within the system. The elected Public Defender has a duty to be more than a passive player within the system. He must speak up as injustices occur--either in the working of the judicial system or in the legislative process. In that sense, the Public Defender must be a leader of public opinion.

Third, the elected Public Defender has a duty to protect the indigent defense system against negative public opinion or politically-motivated action. The Public Defender must never succumb to the temptation to put the interests of public opinion, or his own popularity, over the interests of the client.

Throughout this detailed report, we hope the reader keeps in mind the principal concern of this department: that every client receive the highest quality of representation. The task of every employee, whether department head or telephone operator, is to ask this question--"is there anything more, within reason, we could do for the man or woman who uses our services?"

The task of representing clients in this office involves much more than preparing a case and going to court. The task involves a delivery system where

coordination and management are critical. There are 107 employees, and the proper and efficient distribution of work assignments for each person is essential. In order to meet the demand of effectively representing each client's case, an administrative structure exists within which workload is distributed and work performance is closely supervised. A series of goals and objectives has been developed for the organization of the office. The goals address all activities of the office, and the objectives relate to all areas of supervision and management.

Each goal is a broad, organizing principle for action and for reflection about the work and about the conduct of the office. Each objective is a specific target which is measured four times a year.

The objectives have two functions:

1. To insure that the day-to-day work of each section of the office is being done (output objective)
2. To improve the quality of that work (performance improvement objective)

An example of a goal would be: "To insure the highest quality of representation." An example of an objective would be: "To handle 2,000 felony cases this year"

(output) or "to reduce state prison sentence" (performance improvement).

This Annual Report will be divided into discussion of each of the programs. The Report will describe the program costs, program objectives, and will explain how each of the objectives is measured. As a result, the reader will see the successes and shortcomings of the department. We also make specific recommendations for change.

OVERALL OFFICE GOALS

The overall goals of the office are:

1. To insure that each defendant receives competent and zealous representation
2. To maintain the highest professional and ethical standards on the part of each employee of the department
3. To insure that the delivery of legal services be as economical as possible without sacrificing the quality of those services
4. To maintain public respect for the public defender and the criminal justice system

Everything that is done in the Public Defender's Office is designed to bring about these goals. Every objective is a restatement of practical ways to achieve these goals.

I. JURISDICTION

Section 33 of the Charter:

> [The Public Defender] shall immediately, upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give advice to a person charged with the commission of a crime.

The Public Defender is a creature of the Charter of the City and County of San Francisco. The Charter provides that the Public Defender will represent persons who have been charged with criminal offenses and who are without funds to pay for a privately-retained lawyer.1/

In addition to this specific grant of power by the Charter, the California Government Code also authorizes counties, such as San Francisco, to establish public defender offices.2/ The Government Code sets forth the types of cases which can be handled by a County Public Defender. These include:3/

(1) Criminal cases upon request of the defendant or by appointment of the court;

(2) Contempt cases;

(3) Appeals;

1/ Charter Section 33

2/ Government Code Section 27706

3/ Ibid.

(4) Actions for the collection of wages or other demands against a person for under one hundred dollars;

(5) Defense of individuals in civil litigation where a person is being harassed or persecuted;

(6) Cases involving mental health guardianships and conservatorships;[4]

(7) Juvenile cases.

The Welfare and Institutions Code also provides for the appointment of attorneys for indigent parents whose custody rights to their children are being subjected to proceedings for suspension or for termination of those rights.[5]

The law, thus, provides for public defender representation in a wide spectrum of activities. Although the great bulk of the office's activities are in the criminal courts, the offfice is also quite active in representing persons in mental health and in juvenile cases.

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[4] Probate Code Section 1471 also provides for public defender appointment in probate guardianships under specified conditions.

[5] Sections 634 and 317 of the Welfare and Institutions Code.

II. OFFICE STRUCTURE, STAFF, BUDGET, AND WORKLOAD

1. Office Structure

The executive officer of the Public Defender's Office is the Public Defender. The Public Defender is elected every four years. The Public Defender appoints all Deputy Public Defenders and a Confidential Secretary.[6/] These employees serve at the pleasure of the Public Defender. The balance of the staff, which includes investigators, secretarial, and other support personnel, are selected through Civil Service rules.

The Chief Attorney is the second executive officer of the department. The Chief Attorney is the person to whom all other supervisors directly report. The Chief Attorney is Acting Public Defender should the former leave the state.

There are seven administrative units in the Public Defender's Office. Six of these seven relate directly to legal representation and are under the direction of supervising attorneys. These include:

(1) Misdemeanor Unit: 17 attorneys in 6 Municipal Courts.

(2) Felony Unit: 33 attorneys in both the Municipal Court (Felony Division) and in the Superior Court.

(3) Mental Health Unit: 4 attorneys, 2 investigators.

6/ Charter Section 3.47

(4) Juvenile Unit: 8 attorneys, 1 investigator, 2 social workers, 3 clerical-secretarial personnel.

(5) Research Unit: 2 attorneys and 1 paralegal.

(6) Investigative Unit: 1 head attorney as supervisor, 11 investigators, 2 clerks.

(7) Administrative Unit: 1 executive assistant, 1 accounts coordinator, 19 clerical personnel.

2. Staff

A breakdown of the Office by class and job title is:

Attorneys	69
Investigators	12
Executive Assistant	1
Fiscal/Budget Coordinator	1
Legal Steno	3
Secretary I	2
Junior Clerk	1
Senior Clerk Typist	2
Telephone Operator	2
Senior Legal Process Clerk	2
Legal Process Clerk	7
Legal Assistant	1
Court Alternative Specialist I	2
	107

TABLE A

Cost Breakdown

	(86-87)	(87-88)
Salaries	$4,497,519.00	$5,029,651.00
Fringes	1,063,222.00	1,229,908.00
Salaries and Fringes Subtotal	$5,560,741.00	$6,259,559.00
Expert Witness	155,000.00	143,700.00
Professional Services	--	15,000.00
Contracted Services	37,000.00	45,000.00
Travel	600.00	600.00
Other Services	90,000.00	6,000.00
Telephone	--	75,400.00
Material and Supplies	20,218.00	20,218.00
Membership Dues	200.00	200.00
Rental of Property	445,800.00	445,800.00
Equipment Purchase	4,000.00	4,000.00
Equipment Lease/Purchase	--	--
Police Dept. (use of Wang Word Proc.)	112,575.00	118,223.00
Electricity	70,230.00	70,230.00
Real Estate	5,275.00	--
Central Shop	16,400.00	15,000.00
Management Training	610.00	610.00
Juvenile Court	16,788.00	16,788.00
Reproduction	1,500.00	2,000.00
Other Costs	--	99,658.00
Subtotal ---	$ 976,196.00	$1,078,427.00
Total Costs -	$6,536,937.00	$7,337,986.00

3. Budget

Table B sets forth the rise in the Public Defender budgets from FY 78-79 to the present. Before FY 82-83, a large portion of the salary costs for personnel was borne by federal programs. With the federal dovernment's elimination of the Comprehensive Emergency Training Act (CETA) and with the further federal cut-back of Title II Community Development money, the City and County virtually absorbed the cost of Public Defender's Office, causing a rise in the City's portion of this budget. Since FY 82-83, the rise has reflected only those cost increases mandated by the city charter. In FY 86-87, our costs took a sharp rise due to charter-mandated costs and to the cost of renting new premises.

TABLE B

Comparative Budgets 1978-87

Year	Ad Valorem	C.E.T.A.	Title II (Community Development)	A.B. 90	Total
78-79	2,201,463	Not avail.	---	66,000	Not avail.
80-81	2,207,211	528,892	162,076	73,739	2,971,918
81-82	2,938,032	416,125	206,573	52,751	3,613,481
82-83	4,415,465	---	---	71,000	4,486,465
83-84	5,026,091	---	---	73,000	5,099,091
84-85	5,896,139	---	---	83,803	5,979,942
85-86	6,513,822	---	---	91,403	6,605,225
86-87	6,536,937	---	---	91,403	6,628,340
87-88	7,246,583	---	---	91,403	7,337,986

4. Program Costs

Table C represents a salary cost for each program or each administrative unit within the Public Defender's Office.

TABLE C

Public Defender, Chief Attorney, and Administration

		$ 220,188.00
		527,420.00
		$ 747,608.00
Felony		$2,599,608.00
Misdemeanor		966,092.00
Mental Health		434,771.00
Juvenile		682,606.00
Research		205,183.00
Investigation		623,691.00
	Total	$6,259,559.00

5. Summary of Caseload

TABLE D

Recent Caseloads

	83-84	84-85	85-86	86-87
Felonies				
Superior Court	1,493	1,338	1,540	1,576
Municipal Court	4,152	4,256	4,649	4,977
	5,645	5,594	6,189	6,553
Less cases held to answer or certified	1,434	1,073	1,304	1,388
TOTAL	4,211	4,521	4,885	5,165
Misdemeanor	7,777	9,158	10,630	9,963
Juvenile Cases				
Juveniles	2,211	2,010	1,927	2,054
Adults	395	522	869	825
TOTAL	2,606	2,532	2,796	2,879
Mental Health	4,052	4,100	3,546	5,242

6. Comparison of Caseload

The following is a breakdown of the Public Defender caseload for a nine-year period.

TABLE E

Caseloads 1978 - 1987

Year	Felony	Misdemeanor	Mental Health	Juvenile	Total
78-79	5,329	12,855	2,601	2,040	22,825
79-80	5,346	9,654	1,470	2,895	19,365
80-81	5,450	10,431	1,381	2,418	19,680
81-82	5,963	11,762	1,054	2,598	21,377
82-83	5,769	9,593	3,080	2,626	21,068
83-84	4,211	7,569	4,052	2,606	18,438
84-85	4,521	9,158	4,100	2,532	20,311
85-86	4,885	10,630	3,546	2,796	21,857
86-87	5,165	9,963	5,242	2,879	23,249

III. EXECUTIVE OFFICERS - PUBLIC DEFENDER AND CHIEF ASSISTANT

Program Cost: $220,188

Program Goals:

1. To provide overall leadership
2. To supervise the expenditure of money and use of resources
3. To supervise the Head Attorneys in their management of attorneys and caseloads
4. To develop policies and procedures
5. To make appointments for discretionary and civil service position
6. To evaluate the implementation of all office policies and duties
7. To maintain contacts with other city and state agencies that affect the work of the Public Defender
8. To provide public education about the work of the Public Defender and the work of the criminal justice system
9. To insure a high ethical standard in the performance of Public Defender duties

With the elected official, who is the Public Defender, the "buck stops here." The ultimate responsibility for the entire operation is upon the person of the Public Defender. As such, the Public Defender must

clearly define the duties and the goals of the department and see that these are carried out.

The Chief Attorney is the chief executive officer who assists the Public Defender in the development of policies and procedures. In addition, the Chief Attorney has direct responsibility for the execution of those policies and proceedings. The Chief Attorney is the link between policy making and the line work of the office.

A major part of the Public Defender's function is to lobby the Mayor and the Board of Supervisors for the budgetary needs of the office. The Public Defender must develop the office budget and must work to see that the budget is approved.

The Public Defender also must educate the public at large about the function of the defense attorney in the criminal justice system. A large amount of the Public Defender's time is spent answering inquiries about critical issues which affect the criminal justice system. It is an understatement to say that those issues, whether they relate to drunk driving, or to child abuse, or to the decisions of the California Supreme Court, are matters of passionate debate.

The Public Defender must have the courage to enter that public debate and must provide an informed view, no

matter how unpopular that view may be. As the National Legal Aid and Defender Commentary to Standard 3.5 put it:

> . . . (the director of a defense system) has a duty in terms of public education which, if he fulfills it, will need to give him the kind of suport that can be expected to arise out of the more decent instincts of citizens of a society dedicated to democracy and fair play. If he will approach the community, not as an apologist for his performance, but as an interpreter and reinterpreter of free society's own mandates concerning its constitutional guarantees; if he will approach this giant jury with the same skill that it is hoped that he approaches a petit jury, he will not only give strength to the foundations and structure of his own office but will do much to enhance that of the judicial process as a whole.

IV. ADMINISTRATION

Program Cost: **$527,420**

Program Goals:

1. To provide clerical, secretarial services for the office
2. To provide data collection
3. To prepare payroll and process the expenditures for office

The Administrative Unit is managed by Sharon Christensen, the Executive Assistant. The unit consists of six components:

1. Word Processing (2 legal stenos, 2 senior clerk typists)
2. Senior Legal Process Clerks (2 persons)
3. Legal Process Clerks (7 persons)
4. Accountant
5. Reception Area Workers (2 telephone operators)
6. Court Alternative Specialist (2 persons)

The work of these support personnel is critical to the operation of the Public Defender's Office. Without them, the lawyers could not function. Just as important, the Administrative Unit personnel provide an environment for the clientele and the public. If phones are answered, if documents are produced in a timely fashion, if the public is treated with courtesy, the work of the office will improve. If people are impressed that support personnel can effectively handle their questions and problems, the public will view the Public Defender's Office as a resource, not just another bureaucracy. As public attitude and funding correspond to the performance of the office, so the morale of the employees of the office corresponds to the public attitude. Good morale equals high performance--an equation that yields a net positive to the City and the Public Defender's Office.

V. FELONY UNIT

Program Cost: $2,599,608

Program Goals:

1. To provide effective legal assistance in all felony cases in the Municipal and Superior Courts
2. To decrease the number of cases where the client is held to answer for a felony
3. To decrease the number and length of state prison sentences
4. To reduce felony conflicts

The Felony Unit consists of 33 attorneys. The unit handles nearly 5,000 felony cases in the Municipal and Superior Court. It is supervised by two Head Trial Attorneys, Robert Berman and James Pagano.

The work of the attorneys in this unit begins in the Municipal Court, where a felony defendant is arraigned on a charge. The court makes a determination whether the individual defendant can afford his/her own attorney; and if he/she cannot, the court will appoint a Public Defender. The Public Defender will then make appropriate bail/O.R. motions and set a date for a preliminary hearing. At the preliminary hearing, the prosecution will attempt to show that there is enough evidence to hold the defendant to answer in a trial to be held later in the Superior Court.

The San Francisco Public Defender's Office is uncommon in its handling of felony cases. The independence of the office gives it the freedom to employ a "vertical representation system" in defending its clients. This means that the same lawyer represents the client throughout legal proceedings in both the Municipal and Superior Courts. The value of this system lies in its humanness and consistency. Defendants are not passed from attorney to attorney like so much baggage, but receive personal and individual attention and service from the same attorney at all phases of the process.

Vertical representation insures the consistent handling of the defendant's case throughout the life of the case. It makes the attorney fully accountable to the client for all decisions and actions on the client's behalf. This accountability is an incentive for the attorney to give his or her best efforts toward the client's cause.

The alternative process of "horizontal representation" leads to buck passing and impersonal legal representation, because the client has a different attorney in every phase of the case. In a "horizontal" system, the Public Defender emphasizes the processing of, not defending, clients. It is a system that serves the court and the courts' preoccupation with the calendar.

Table D represents the workload and the disposition of cases of the Felony Unit from FYs 82-83 to 86-87.

TABLE F

Public Defender Felony Cases

Municipal Court Felonies

	82-83	83-84	84-85	85-86	86-87
Arraigned	4,152	5,175	4,256	4,649	4,977
Held to Answer	918	815	913	659	648
Certified Pleas	530	533	446	645	740

Activity and Disposition of Superior Court Cases

		82-83	83-84	84-85	85-86	86-87
a.	Case Activity					
	Motions to Revoke	459	434	1,000	831	
	Certifications	522	530	446	870	740
	Sentences	1,753	1,528	1,338	1,540	1,576
b.	Case Disposition					
	State Prison	479	490	524	470	512
	Probation	1,079	815	549	831	976
	Dismissals	193	198	233	218	154
	Other	181	25	32	24	34
c.	Trial Activity					
	Total Cases	109	80	98	96	108
	Guilty Verdict	46	35	63	58	58
	Acquittals	40	16	20	19	36
	Hung Juries	23	29	15	19	14

There are several points that should be emphasized by those statistics:

1. <u>State Prison Commitments Remain High</u>

Approximately 33% of Superior Court sentences now carry a prison term. The phenomenon that we notice with our own cases is also true of private attorneys and community defenders. It is also true of Superior Court cases outside of San Francisco.

Since 1980 and particularly since the passage of Proposition 8 in 1982, the overall state trend in state prison sentences has been upward. Sentences are steeper, judges more severe--the procedures changed to favor the prosecution. The result is that criminal defendants are much likely to go to state prison whether they plead guilty or whether they go to trial. Take this example:

> Defendant is charged with burglary. He has three prior residential burglaries. His maximum exposure is 21 years--6 for the present offense, 15 for the priors.

The defendant can go to trial, be convicted, and face up to 21 years. In the alternative, he can plead pursuant to a plea bargain. Because the prosecutor has considerable leverage (in view of the maximum penalty), a defendant will trade a shorter state prison sentence in order to avoid the maximum sentence. A few years ago when

this same offense carries a maximum of nine years, he might be willing to hold out for a county jail sentence.

Perhaps, the only point of consolation is that the number of state prison sentences in San Francisco have remained relatively stable since 1981. Throughout in California, there has been a continuous growth in the number of state prison commitments.

TABLE G

State Prison Commitments

1) Persons

Year	San Francisco	California
1979	525	9,874
1980	593	11,347
1981	841	13,932
1982	724	15,932
1983	634	18,398
1984	646	17,602
1985	880	20,543
1986	846	23,466

(Source: California Department of Corrections)

2) Cases

Year	San Francisco	California
1979	517	8,878
1980	467	10,311
1981	795	13,971
1982	759	25,122
1983	756	16,677
1984	841	18,094
1985	938	21,421
1986	858	24,210

(Source: Adult Felony Dispositions-Department of Justice)

3) Prison Commitments Per 100 Convictions

Six Months Ending	State	Quarter Ending	State
6-12/31/77	29%	3/31/84	40%
1-6/30/78	33%	6/30/84	41%
7-12/31/78	34%	9/30/84	42%
1-6/30/79	34%	12/30/84	42%
7-12/31/79	34%	3/31/85	43%
1-6/30/80	35%	6/30/85	43%
6-12/31/80	36%		
1-6/30/81	37%		

(Source: Judicial Council)

4) Public Defender Cases--Commitments To State Prison

1978-79	402
1979-80	390
1980-81	538
1982-83	479
1983-84	490
1984-85	524
1985-86	420
1986-87	512

2. **There Has Been A Noticeable Change In The Way Plea Bargaining Is Conducted**

As our status indicate, a high percentage of felony pleas occur at the Municipal Court level. We call these certified pleas--pleas are taken by a Municipal Court judge and certified to the Superior Court.

In other annual reports, we have written of our distress with this process. We know that pleas taken so early in the process are more likely to be done without full investigation and consideration of the merits of the case. However, there are reasons why certified pleas have become such a prominent part of criminal law practice.

For one thing, the penalties associated with felony cases are so serious that district attorneys can offer a reduction in potential sentences in exchange with an early plea.

For another, Proposition 8 restricts and discourages plea bargaining in the Superior Court. In many cases, the Municipal Court is the only forum for the negotiation and acceptance of a plea of guilty.

3. <u>There Is An Increase In The Number Of Jury Trials</u>

In recent years, we, in the Public Defender's Office, have made it a policy to fight cases in the face of severe penalties.

An office that fails to try its share of cases is an office that has lost the will to fight for the client. It is an office that lacks credibility, because the prosecution knows that its attorneys will "roll over" rather than hold out for the client's interests. This does not mean that individual attorneys should elect to go to trial in cases where the evidence against the client are great, and where a plea bargain would lessen the exposure to a more severe sentence. But it does mean that a trial must be held if a prosecutor fails to create a <u>substantial</u> incentive to engage in a plea agreement.

VI. MISDEMEANOR UNIT

Program Cost: $966,092

Program Goals:

1. To represent indigent defendants in misdemeanor cases in the Municipal Court
2. To limit the number of misdemeanor convictions
3. To try as many misdemeanor cases as is necessary to protect the interests of the clients

The Misdemeanor Unit consists of 17 lawyers. It is supervised by Head Trial Attorney Daro Inouye and Robin Levine. The unit handles cases in six departments of the Municipal Court. As such, it carries a tremendous caseload--roughly 10,000 cases a year.

Misdemeanor offenses carry a maximum sentence of six months or a year in the county jail and a fine of between $500 and $1,000, depending on the charge.

The misdemeanor courts deal with an enormous variety of offenses--from public drunkenness to auto burglaries and aggravated assaults. Table H indicates the work of the court.

TABLE H

Misdemeanor Unit Cases

	83-84	84-85	85-86	86-87
Misd. cases	7,165	9,158	9,614	8,786
Motion to revoke	612	802	1,024	1,177
	7,777	9,960	10,638	9,963

A matter of particular concern is the number of jury trials. Large-scale defense operations can develop a "cop-out" mentality ever goes to trial. The routine of plea bargaining becomes almost mesmerizing, and jury trials become a departure from that routine. The net effect is that jury trials decline as an institution, because lawyers and judges are too lazy or too afraid to make the additional effort of preparation for the trial.

Table I indicates the jury trial activity over the past nine years.

TABLE I

Misdemeanor Jury Activity

	78-79	79-80	80-81	81-82	82-83
	87	85	135	78	92
Convicted	n/a	37	58	38	42
Acquitted	n/a	30	38	26	40
Hung Mis.	n/a	18	39	14	12

	83-84	84-85	85-86	86-87
	80	91	96	107
Convicted	--	56	58	58
Acquitted	--	20	19	36
Hung Mis.	--	15	19	13

The most important result for an attorney in criminal cases is the dismissal of his/her client's case. Over the many years, the number of cases thrown out by the District

Attorney or the court is high--it has ranged from 35-40% in the misdemeanor area. A high percentage are dismissals after a plea of not guilty is entered. A portion of the dismissals result when defense and prosecution agree to defer prosecution and, instead, have the defendant divert from the criminal justice system for a specified period. If the defendant completes a period of community service work and stays out of trouble, the court enters a dismissal.

Table J sets out the pattern of dismissals and diversions since FY 78-79.

TABLE J

Fiscal Year Comparisons - Misdemeanor Unit

Year	New Cases	Dismissals	Diversions
86-87	8,786	2,202	1,277
85-86	9,164	2,080	962
84-85	9,158	2,165	967
83-84			
82-83	8,375	2,522	1,483
81-82	9,826	2,473	2,137
80-81	8,622	3,404	1,198
79-80	8,395	3,433	577
78-79	12,136	Not av.	Not av.

VII. JUVENILE UNIT

Program Cost: $682,606

Program Goals:

1. To represent juveniles in delinquency cases and in cases where the District Attorney seeks to exclude juveniles from the juvenile justice system
2. To represent adults whose parental rights are being suspended or terminated

The Public Defender's Office represents juvenile clients in the Juvenile Court at the Youth Guidance Center. The juvenile court unit of the office has a staff of eight attorneys, one investigator, two social workers, and three clerical-secretarial personnel. The unit is supervised by Head Trial Attorney Joseph L. Spaeth.

Most of the Public Defender juvenile clients are charged with having committed offenses which, if the juveniles were adults, would be crimes. In these proceedings, the District Attorney files a petition pursuant to Section 602 of the Welfare and Institutions Code. The case is later heard before a referee or before a Superior Court judge.

The Public Defender also represents other juveniles who are alleged to have behavior problems. These juveniles are not charged with committing any acts which would be criminal in adult courts. Typically, these are

children who are charged with truancy, with curfew violations, or with being beyond parental control. These are called "status" offenders. Petitions pursuant to Section 601 of the Welfare and Institutions Code are filed in these cases. If these petitions are granted, the child is taken from the control of his or her parents.

In certain criminal-type cases, the District Attorney will attempt to exclude a juvenile from the juvenile court process and to have the juvenile prosecuted as an adult in an adult criminal court (pursuant to Section 707, et seq., Welfare and Institutions Code). Before that action is taken, the juvenile receives a hearing on whether or not it is proper to have the juvenile tried as an adult.

The Public Defender also represents parents in Juvenile Court, where the Department of Social Services attempts to suspend or to terminate the parents' custody oveR their children.

The Public Defender must be a forceful and a zealous advocate for the protection of the rights of the juvenile. Juvenile cases are adversary proceedings, and the attorney must use all of his talents in presenting the factual and the legal defenses on behalf of the juvenile client. At the same time, the Public Defender must also be sensitive to the special problems confronting a juvenile offender. Attorneys in the juvenile courts must

be able to identify emotional and educational difficulties and to explore the alternative which exist outside of the legal system. The lawyers must utilize fully all of the community-based agencies which provide social or psychiatric assistance.

TABLE K

Juvenile Statistics

Fiscal Year Comparisons

1. Caseloads--Public Defender

Year	601	602	707	300	Total
78-79	127	2,119	NA	225	2,471
79-80	141	1,410	19	325	1,895
80-81	145	2,118	15	197	2,475
81-82	130	2,470	12	202	2,823
82-83	89	2,217	8	320	2,634
83-84	30	2,181	0	39	2,250
84-85	66	1,944	5	522	2,537
85-86		1,927	2	869	2,798
86-87		2,054	1	825	2,880

2. Commitments to CYA--Public Defender Cases

78-79 --- 96	83-84 --- 86*
79-80 --- 81	84-85 --- 31
80-81 --- 89	85-86 --- 36
81-82 --- 90	86-87 --- 16
82-83 --- 65	

3. Commitments to Log Cabin--Public Defender Cases

79-80 --- 136	83-84 --- 113*
80-81 --- 95	84-85 --- 128
81-82 --- 102	85-86 --- 130
82-83 --- 103	86-87 --- 123

* All cases--P.D. and non-P.D. cases.

MBO OBJECTIVES

1. To represent juveniles in at least 2,200 cases petitioned under Sections 601, 602, and 707 W&I Code and 300 adults in Section 300 W&I Code proceedings

Our statistical findings parallel those of the Department of Justice and the Judicial Council (see Table L):

TABLE L

Juvenile Court Caseloads and Filings (All Cases)

1. Department of Justice: Active Juvenile Probation Caseload 1972-1986

1972 - 1,997	1977 - 1,144	1982 - 1,385
1973 - 1,956	1978 - 1,119	1983 - 1,348
1974 - 2,004	1979 - 1,333	1984 - 1,208
1975 - 1,940	1980 - 1,313	1985 - 1,291
1976 - 1,837	1981 - 1,259	1986 - 1,287

2. Judicial Council Reports: Juvenile Court Filing

Year	Total Filings	Original Filings	Subsequent Filings	Contested Matters	601 W&I	602 W&I
76-77	2,355	1,597	758	480	209	2,098
77-78	2,017	1,484	533	437	172	1,815
78-79	2,130	1,467	653	516	93	2,026
79-80	2,116	1,426	690	621	132	1,979
80-81	1,933	1,178	755	556	119	1,456
81-82	2,295	1,388	907	530	87	1,301
82-83	2,356	1,128	1,030	305	49	1,254
83-84	2,158	1,278	1,078	270	71	1,083
84-85	1,982	1,533	449	235	19	1,518
85-86	1,981	1,618	363	221	16	1,966

According to Tables K and L, the caseload at Juvenile Court has not changed dramatically since FY 78-79. The most remarkable feature of these statistics is the decline of 601 W&I cases and the increase of 300 W&I cases--patterns which are likely to stay in effect.

It is our opinion that petitions against adults regarding termination of parental rights will remain high for the foreseeable future. There are two factors influencing this increase of workload:

(1) S.B. 14 which mandates hearings on a six-month basis;

(2) The increase of staff by the Department of Social Services (D.S.S.) and the City Attorney to bring these petitions against allegedly inadequate parents. The City Attorney has six to eight attorneys assigned full time to this work, in addition to a full-time supervisor. The City Attorney also has the use of five D.S.S. court officers to investigate and to prepare these cases. Arrayed against this are three deputy public defenders.

2. <u>To utilize social work in at least 225 delinquency cases</u>

The Juvenile Unit employs two full-time social workers. They interview clients, render evaluation, and

provide dispositional plans. They do this work in 601, 602, and 707 W&I cases. Their work has been successful in reducing log cabin and CYA commitments and in persuading the court not to exclude the juvenile from the juvenile system.

The Public Defender social workers have an important advantage: the information is conveyed within the setting and the protection of the lawyer-client relationship. Thus, the client and the client's relatives are more likely to speak candidly about their problems. Accordingly, the social worker is better able to make an accurate diagnosis and an appropriate plan for treatment or assistance.

3. <u>To involve community-based agency participation in at least 120 cases</u>

There exists a rich network of community-based agencies, many existing on private funding, others on public and quasi-public funding. They have trained counselors and instructors and they serve specialized clientele; i.e., Hispanic youth in the Mission by "Real Alternatives". Currently, the office makes good use of these programs; the office will continue to increase its involvement with these groups.

The use of these agencies is a healthy alternative to incarceration in juvenile hall, log cabin, or CYA. These

agencies provide guidance in educational, emotional, and behavioral problems for young people; whereas custody hardens young people, isolates from the mainstream, and tends to criminalize them.

4. <u>To limit the number of 707 W&I certifications to 10</u>

The exclusion of the juvenile offender from the juvenile justice system is a drastic step. It means that the youth is punishable in the same way that an adult is and can suffer the state prison sentences for lengthy terms.

A youth charged with certain crimes, like murder, robbery, rape, will be <u>presumed</u> to be unfit for the juvenile justice sytem. These crimes are listed in Section 707b. Youth who are charged with all other offenses, not set forth in Section 707b, are not presumed; and the burden is on the prosecutor to establish unfitness.

The Public Defender has made every effort to keep youth charged with crimes, even serious crimes, within the juvenile justice system.

We feel that rarely, if ever, are youthful offenders "helped" by adult punishment or deterred from further criminality. The youth is merely hardened or criminalized further by exposure to the world of the adult offender. We feel, too, that adult treatment is never really carried out--the juvenile remains largely isolated from adults and

held in separate facilities--whether in the county jail or state prison. And there is a final irony: most of those excluded from the juvenile court end up going to the California Youth Authority after being tried and sentenced as an adult.

Fortunately, we held the total number of 707 W&I exclusions in FY 86-87 down to just one case.

VIII. MENTAL HEALTH UNIT

Program Cost: $434,771

Program Goals:

1. To represent those alleged to be mentally ill in conservatorship proceedings
2. To represent the retarded in progress related to their treatment and placement
3. To represent the insane in proceedings for the restoration of their sanity

The Public Defender is the principal attorney in the community for the mentally ill. Most of the work of the Mental Health Unit is done in the defense of petitions to establish mental health conservatorships pursuant to Section 5500 of the Welfare and Institutions Code. This conservatorship petition is the legal procedure for establishing judicial control over a person who is alleged to be a danger to himself or others or who is gravely disabled to the extent of lacking the ability to provide

food, shelter, and care for himself/herself. If the petition is granted, an individual may be placed in a state hospital or in a local facility, whichever the court deems appropriate.

In these cases, the Public Defender is appointed to represent the proposed ocnservatee. As the attorney for the proposed conservatee, the Public Defender must review the medical reports, witnesses, and explore alternative placement if the client contests the hearing.

The Mental Health Unit also represents mentally-ill clients who have been sent to state hospitals. These involve conservatees committed under Section 5500 of the Welfare and Institutions Code who have a right to periodic review of their status and their treatment, clients who have been found incompetent to stand trial under Sections 1368-70 of the Penal Code, those who have been found not guilty by reason of insanity under Section 1027 of the Penal Code, mentally disordered sex offenders pursuant to Section 6300 of the Welfare and Institutions Code, and mentally retarded dangerous persons under Section 6500 of the Welfare and Institutions Code.

These clients must be regularly visited and interviewed. If the state hospital makes an inappropriate recommendation for a patient, the Public Defender must bring that fact to the attention of the court. If it is

necessary, a jury trial may be held to determine whether or not a person should be kept in a state hospital or whether or not his/her parole should be revoked.

TABLE M

Summary of Mental Health Unit's Work

Statistics Fiscal Year 1986-87

Probable Cause Hearings			3,075
New LPS Conservatorships	Granted	270	
	Denied	739	
	TOTAL CASES		1,009
Renewal LPS Petitions	Granted	461	
	Denied	241	
	TOTAL CASES		702
Med Consent Hearings including ECT (LPS)			55
Rehearings on Status	Released	24	
	Denied	46	
	Withdrawn	27	
	TOTAL CASES		97
Habeas Corpus Writs	Granted	14	
	Withdrawn (patient released)	71	
	Denied	49	
	TOTAL CASES		134
Post Certification Petitions	Granted	6	
	Denied	2	
	Withdrawn	3	
	TOTAL CASES		11
Placement Hearings and Reports		119	
	TOTAL CASES		87
6500 Petitions	Granted	1	
	Denied	1	
	TOTAL CASES		2
Jury Trials (Civil)	Requested	16	
	TOTAL CIVIL CASES		5,172

PROBATE MATTERS

Probate 3200 Medical Consent Hearings	5	
Probate Conservatorships	1	
TOTAL PROBATE CASES		6

CRIMINAL CASES

P.C. 1026.5

Extended	13	
Terminated	8	
Withdrawn	1	
TOTAL CASES		22

P.C. 1026.2

Released to parole	8	
Restored	1	
Denied	11	
Withdrawn	7	
TOTAL CASES		27
P.C. 1603 et seq. hearings		15
TOTAL CRIMINAL CASES		64
TOTAL MENTAL HEALTH UNIT CASES		5,242

IX. RESEARCH UNIT

Program Cost: $205,183

Program Goals:

1. To prepare writs and appeals, legal memoranda in complex cases
2. To provide research for cases in litigation
3. To provide technical assistance in writs and appeals

The newest administrative component of the Public Defender's Office is the Research Unit. It is located on the second floor, beside the Public Defender Library. One Head Trial Attorney, Grace L. Suarez; another attorney; and one paralegal work there. The unit writes briefs, writs and appeals, researches the law for cases in trial, and provides technical assistance to attorneys in the preparation and filing of pleadings.

The unit has an indexed brief bank and a microfiche file containing cases of the State Public Defender. The unit also has a Westlaw terminal to perform computerized legal research.

The unit has the use of three Wang word processors and one Apple computer which generate work rapidly.

The value of the unit cannot ber overstated. It generates an average of 18 documents a month, including

petitions for writs, appellate briefs, and trial motions. Not included are the many questions handled orally and the ongoing technical assistance provided to lawyers in trial. This can include anything from performing a Westlaw search for an attorney about to argue a motion to drafting special jury instructions.

The unit's staff constantly maintains and updates a brief bank containing several hundred documents. They are indexed on the Wang word processor for easy retrieval. In addition, a library of forms, kept online on the Wang system, provides attorneys with up-to-date, technically-correct documents.

The Public Defender library contains updated practice books and materials from recent lectures, making it an efficient research tool. Maintaining the library and brief bank occupies a substantial portion of staff time.

The unit produces a monthly bulletin citing and summarizing appellate decisions and issues memos as needed on important cases and new laws.

The work of the unit enhances the quality of the trial attorney's representation. The harried trial practitioner can still submit a well-researched and drafted motion and seek pretrial writ relief within hours or the motion's denial. The attorney can keep up with the torrent of new cases published every year and can feel confident that the

advice he gives is based upon an understanding of the most current law.

X. INVESTIGATION UNIT

Program Cost: $623,691

Program Goals:

1. To obtain information about the facts and circumstances regarding the cases of the individual clients represented by the Public Defender
2. To provide necessary support services to attorneys in furtherance of the representation of those cases

The Investigative Unit consists of a Head Trial Attorney, Gordon H. Armstrong, who supervises the unit, 11 investigators, and 2 clerks. The unit carries out investigation for the Felony and for the Misdemeanor Unit.

An investigator starts working on a case when an attorney makes a written request. The request may ask that a witness be located and interviewed, that the crime scene be photographed, and/or that a document be located. A suspense date is set for the completion of the investigation. Supplementary requests may be made. the same investigator will be assigned to the case throughout the life of the case.

Solid and competent investigation is absolutely essential to effective representation. It can literally win the case for the lawyer. It can provide the exculpatory evidence which proves a client's innocence. It can find those facts which contradict the prosecutor's case.

Offices simply cannot afford to neglect adequate and professionalized defense services. As the 1976 Commission on Defense Services stated:

> Criminal investigation is an essential element of criminal defense. Offices lacking adequate investigative staff tend to neglect the investigative function and rely on the state's version of witness statements and other evidence. It is not cost-effective for lawyers to do all of the investigation connected with a case. Moreover, where lawyers conduct investigations, it may be necessary to have an investigator along to refute charges of impropriety and to have a witness who can testify at trial if necessary.
>
> Secondly, since investigation is increasingly becoming a professional skill requiring professional expertise, investigators should be hired who have the professional skills required. Professional investigators greatly improve the overall quality of service in a defender office.
>
> In order to ensure that investigations are conducted in every case where there is a factual question not subject to objective determination, an adequate attorney-investigator ratio is necessary. At

> least one investigator should be employed for every three staff attorneys. This figure is based upon the experience of defenders from coast to coast. (At p. 333.)

This year, the Investigative Unit completed 2,121 investigations.

The Investigative unit experienced the selection of ten investigators through the Civil Service. At last, the temporary status was ended.

XI. OTHER MATTERS OF INTEREST

1. Conflicts

The Public Defender is required to represent all persons accused of crimes who do not have enough money for their counsel. However, cases arise where the Public Defender cannot represent an accused who does not have funds for his own counsel. For example, there may be more than one person charged in a case, and the Public Defender can only represent one person. In that case, the Public Defender declares a conflict-of-interest; and a separate, private attorney will be appointed. Conflicts can arise also where a public defender client becomes a witness against another public defender client. In that case, one or the other will have to have separate non-public defender counsel.

In certain cases, conflicts may declare in debatable circumstances. For instance, the Public Defender may have

represented a witness in a current case years ago. It is questionable whether the Public Defender really has to get out of the case.

We have sought to limit declarations of conflict-of-interest to those situations required by law and ethics. In multiple defendant cases, we usually represent the "heaviest" defendant--the one whose case requires the most work.

Conflict costs are expensive. What is more, a Public Defender that shies away from serious cases by finding a far-fetched reason for a conflict does a disservice to his statutory responsibilities. The following table states the number of conflict cases, as well as the costs, over the last several years.

TABLE N

Conflict Cases

Conflict Costs

Year	Municipal Court	Superior Court	Total
82-83	605,822	794,992	1,400,814
83-84	600,719	840,201	1,440,920
84-85	508,893	968,707	1,477,602
85-86	1,064,647	1,080,848	2,145,495
86-87	921,935	1,383,426	2,305,361

Number of Conflict Cases

Year	Municipal Court	Superior Court	Total
82-83	2,096	1,111	3,207
83-84	1,532	1,025	2,557
84-85	1,432	787	2,219
85-86	2,417	1,460	3,877
86-87	2,007	1,841	3,848

2. **Volunteer Attorneys - Private Law Firms**

For over ten years, the Public Defender's Office has benefited from the volunteer participation of Pillsbury, Madison & Sutro and Morrison & Foerster. Recently, our volunteer staff has been joined by members of the law firm of Heller, Erhman, White & McAuliffe. For stints up to six months, an attorney from one of the nation's most prestigious firms works in our office handling felony cases. The quality of their work has been outstanding, reflecting the excellence and public spirit of their firm and themselves individually. We all owe a great vote of thanks to these fine lawyers.

3. **Removal from the Hall of Justice**

In 1978, Jeff Brown wrote every member of the San Francisco Bar:

> "A law office cannot inspire the respect and confidence of its clients when the clients and their family, friends, and prospective witnesses must pass through a metal detector and be subject to search in order to confer with their attorneys.
>
> Minimum standards set forth by the National Advisory Commission on Criminal Justice Standards and Goals (Standard 13:13.2) mandate the removal of our law offices from the police-court complex. Our offices must be moved out of the Hall of Justice and into other available public facilities."

What this statement did not say was that the San Francisco Public Defender also had one of the congested, crowded, and unsanitary working conditions in city government. The office space operated in violation of fire and OSHA regulations. As the American Bar Association sponsored report noted in 1979:

> "It may seem strange to begin a list of problems related to financing with the subject of office space. However, the offices of the Public Defender are so inadequate and appalling that probably no significant improvement in the overall quality of the program is possible until the space problem is remedied . . . .

More than 100 employees, more than 50 of them lawyers, are crowded into the Public Defender's approximately 5,500 square feet of space on the second floor. The average of 55 square feet per employee is less than recommended for modern detention facilities; and this does not take into account the hundreds of defendants, witnesses, and other visitors who come to the office daily." (Lefstein: Criminal Defense Services for the Poor, May 1982.)

After years of studies and frustrations, the Mayor and the Board of Supervisors approved a new location for the Public Defender at 555 Seventh Street--a facility to be shared with the Office of Civilian Complaints and the Sheriff's Parole Office.

Our work can now be done with dignity. Our clients can be interviewed in private. Our employees will work in safe quarters.

4. The New "War" On Drugs

As this Annual Report is being submitted to the Mayor, the criminal justice system is facing the enormous burden resulting from a new drug-arrest program. The Police Department recently began a large scale drug program in the ghettos of this city. Doubling the number of narcotics officers, the Police Department has used undercover operatives to purchase drug from potential sellers. Originally, the funds for this "buy program" are from confiscated money in other drug cases. These funds are running out, and the program may have to be subsidized with city-tax revenue.

The impact of this program has been dramatic. The growth in the number of arrests for opiates, heroin, and cocaine cases has been enormous. The figures illustrate that amply:

Opiate Arrests

	1987	1986	Percent Change
August	508	389	+30.59
September	590	354	+66.67
October	710	377	+88.33
Year-to-date	4702	3465	+35.70

(Source: San Francisco Police Department)

The influx of these cases is immediately felt in the jails, the courts, the prosecutor's office, and the Public Defender's Office.

The jail, for example, has experienced in recent weeks the highest number of bookings in its history, and is, at this writing, 132 people overcapacity (136%). The courts are struggling with the burden which is illustrated by the following comparisons in felony persons accused in the Municipal Court.

Persons Accused of Felonies

	1987	1986	
July	640	527	+17.6%
August	741	492	+50%
September	793	570	+39%
October	868	695	+24.8%
November	N/A	546	
December	N/A	584	

(Source: Judicial Council Reports)

And we in the Public Defender's Office are probably in the most acute workload crisis we have faced in recent years. It is not uncommon for a deputy public defender to have as many as 10-15 cases set on a given day for preliminary hearings. To adapt to this change, we have instituted a series of remedial and interim steps. But it is clear that a continuation of this situation will cause

us to reach a point of not being able to accept further cases. In other words, because the growth of the caseload threatens our ability to provide competent representation, we may have to refuse to accept additional cases.7/

It also may be well to reflect on the advisability of an intensified decoy program. Does this program stop drugs? There is not a knowledgeable criminologist would say that it does. What it does is that it captures a portion of the user population, many of whom are juveniles. The users sell in small amounts to maintain their own habits.8/ In the courtrooms of San Francisco one can see hundreds of offenders being charged with felonies for selling one "rock" of crack, a high power cocaine substance. What is not seen is the big-time dope dealer being prosecuted, because this program is designed

---

7/ Standard 5-4.3 of the American Bar Association Standards Relating to Criminal Justice states:

> ". . . Whenever defender organizations . . . determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organizations . . . must take such steps as may be appropriate to reduce their pending or projected workloads."

8/ According to the Mayor's Office, the police department had made in the week of November 24 two hundred fifty one arrests for "crack' sales, and have confiscated $204,290 for $17.09 per arrestee.

on a micro-enforcement basis. As the executive director of the Mayor's Council on Criminal Justice said, ". . . it is like a chess game, you go after the pawns first and work your way up. Then the knights, then the kings." (See Bay Guardian, November 25, 1987, p. 7.) But to date, only the pawns are being prosecuted, no knights, no bishops, and, of course, no kings or queens.

While police rack up statistics and arrests, there is a tragic lack of rehabilitative services. The Community Forum on the Needs of Children, Youth, and Families has stated that there are almost no treatment services for adolescents, despite the fact that "crack" arrests are filling Juvenile Hall to capacity. Much the same can be said about treatment facilities for other groups. We are, therefore, making arrests, placing people in jail and sending them to state prison, putting them on probation and parole without the support they need to re-enter society. In other words, we have a program that virtually guarantees that people will fail.

5. **Affirmative Action**:

Affirmative Action represents a major goal for 1988. The Office of the Public Defender represents in great number individual from minority backgrounds. The presence of attorneys from ethnic, social, and economic backgrounds of the client community assists the lawyer-client

relationship by developing more a relationship of trust. It is also an important statement to this office's commitment to equal opportunity. At the present time, 39%[9/] of the lawyers are of minority ethnic groups, and 42% are women. In addition, this office has a substantial presence of Gay and Lesbian attorneys. In 1988, it will be our intention to increase minority presence in this office, and we are confident we can do it. Although the Civil Service Commission has determined that we are in compliance with workforce standards,[10/] we are determined to make this office even more representation of the community.

9/ (Black attorneys, 8 = 11.9%, Hispanic, 7 = 10%, Asians, 11 = 16.4%).

10/ The total data for attorneys meets 'Lawyer' labor force availability for San Francisco" (Letter of Nancy Yokoyama Woo to Jeff Brown, dated December 12, 1985).

APPENDIX A

Workload and Activity of Municipal and Superior Courts

Cases Set for Preliminary Hearing

1-06-78	2,524
7-12-78	2,614
1-06-79	2,810
7-12-79	3,713
1-06-80	3,466
7-12-80	3,568
1-06-81	3,816
1-06-82	3,670
7-12-82	4,801
1-06-83	3,027
6-12-83	3,103
1-06-84	2,883
6-12-84	2,656
1-06-85	4,011
6-12-85	915
1-07-86	3,354
7-12-86	3,045
1-07-87	2,775

(Source: CMS Computer)

Felony Arraignments

1-06-78	1,269
7-12-78	1,283
1-06-79	1,337
7-12-79	1,208
1-06-80	1,464
7-12-80	1,434
1-06-81	1,820
7-12-81	1,428
1-06-82	1,097
7-12-82	1,023
1-06-83	966
6-12-83	1,039
1-06-84	989
6-12-84	988
1-06-85	951
6-12-85	903
7-01-86	1,137
7-12-86	825
1-07-87	735

(Source: CMS Computer)

Misdemeanor Arraignments

1-06-78	16,745
7-12-78	15,830
1-06-79	14,533
7-12-79	12,587
1-06-80	13,432
7-12-80	13,565
1-06-81	13,727
7-12-81	14,955
1-06-82	14,402
7-12-82	13,560
1-06-83	10,224
6-12-83	9,517
1-06-84	10,086
6-12-84	8,578
1-06-85	11,260
6-12-85	11,502
1-07-86	11,302
7-12-86	11,095
1-07-87	9,582

(Source: CMS Computer)

Superior Court Sentences

1-06-77	1,381
7-12-77	1,226
1-06-78	1,305
7-12-78	1,520
1-06-79	1,467
7-12-79	1,372
1-06-80	1,552
7-12-80	1,428
1-06-81	1,587
7-12-81	1,610
1-06-82	1,559
7-12-82	1,748
1-06-83	1,828
6-12-83	1,531
1-06-84	1,811
6-12-84	1,634
1-06-85	2,114
6-12-85	2,257
1-07-86	2,413
7-12-86	2,518
1-07-87	2,765

(Source: CMS Computer)

Certified Pleas

1978-79	314
1979-80	390
1980	375
1980-81	462
1981	880
1981-82	822
1982	1,215
1982-83	1,649
1983	1,065
1983-84	1,111
1984	1,208
1984-85	1,400
1985	1,579
1985-86	1,563
1986	1,651
1986-87	1,929

(Source: Judicial Council)

Felony Arrests

1-06-78	5,668
7-12-78	5,439
1-06-79	5,773
7-12-79	6,022
1-06-80	6,548
7-12-80	8,063
1-06-81	8,338
7-12-81	8,336
1-06-82	7,871
7-12-82	8,192
1-06-83	7,927
7-12-83	8,171
1-06-84	8,556
7-12-84	9,320
1-06-85	9,454
7-12-85	7,170
1-07-86	8,829
7-12-86	8,728
1-07-87	6,455

(Source: CMS Computer)

Persons Accused of Felony Cases in Municipal Court

1978-79	6,038
1979-80	6,629
1980	6,345
1980-81	6,415
1981-82	7,708
1982	7,235
1982-83	6,964
1983	6,717
1983-84	5,982
1984	6,014
1984-85	6,550
1985	7,311
1985-86	7,412
1986	7,137
1986-87	7,166

(Source: Judicial Council Reports of Municipal Court)

Persons Accused of Non-Traffic Misdemeanors in Municipal Court

1979-80	15,131
1980	17,510
1980-81	14,322
1981-82	20,091
1982	18,276
1982-83	14,418
1983	11,563
1983-84	12,281
1984	13,831
1984-85	15,399
1985	15,495
1985-86	15,206
1986	14,656
1986-87	13,417

(Source: Judicial Council Reports of Municipal Court)

Superior Court Activity

	1982-83	1983-84	1984-85	1985-86
New Actions	3,216	3,267	3,148	3,491
Informations	1,771	1,920	1,731	1,512
Indictments	6	1	1	n/a
Certifications	1,239	1,129	1,250	1,802

APPENDIX B

Public Defender Cases Pending in Superior Court for Trial

1983		1984		1985		1986		1987	
1/3	160	1/1	186	1/16	232	1/1	208	2/1	200
1/15	164	1/15	163	2/1	236	2/1	230	2/14	181
2/15	166	2/16	187	2/16	225	2/16	263	3/28	176
3/1	165	3/16	218	3/1	227	3/1	296	4/4	178
3/15	147	4/16	218	3/15	210	4/1	285	4/20	179
4/4	150	6/1	190	4/16	197	4/19	259	5/2	185
4/21	169	6/16	182	5/1	213	4/21	254	6/1	130
5/1	178	7/1	177	5/16	206	4/28	246	6/17	134
5/15	170	7/16	173	7/16	160	5/2	236	6/27	119
6/1	160	8/1	193	8/1	147	5/12	247	7/13	118
6/19	155	8/16	191	9/1	128	5/19	207	7/18	129
7/1	158	8/31	204	10/1	178	5/26	192	7/25	144
7/16	152	9/16	217	10/15	185	6/2	184	8/1	152
8/1	166	10/16	190	11/1	201	6/9	200	8/9	167
9/1	187	11/1	210	11/16	191	6/15	200	8/17	174
9/15	210	11/16	230	12/1	193	8/16	172	8/24	182
10/1	174	12/16	199	12/16	194	8/25	164	8/31	172
10/15	218					9/1	159	9/8	186
11/1	187					9/15	161	9/21	188
11/16	204					9/23	167	10/5	195
12/1	205					9/30	167	10/12	206
12/15	189					10/10	202	10/26	206
						10/16	199	11/2	207
						11/2	206	11/16	218
						11/22	200	11/30	232
						12/1	196		
						12/6	202		
						12/13	197		
						1/6	183		

(Source: CMS Computer)

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